

Exhibit A

PLAINTIFFS' PROPOSED JURY INSTRUCTION #19

Added Motion by Plaintiffs: Spoliation

It is undisputed in this case that Paul MacKenzie took notes concerning Ms. Dunn's employment and termination from Condor during the time of Ms. Dunn's employment with Condor. It is also undisputed that Mr. MacKenzie used these notes to create a typed memorandum approximately one year after Ms. Dunn's termination to identify alleged explanations for her termination. It is undisputed that Condor destroyed these contemporaneous notes.

You have not had the opportunity to see the notes of Mr. MacKenzie.

You have the right to conclude that the missing evidence, had you been able to view it, would have been helpful to Ms. Dunn's case and detrimental to Condor's case.

The reason for this rule is that where you would normally expect a party to produce evidence but, without reasonable explanation, it fails to do so, it leaves a natural inference that the non-producing party fears exposure of facts which would be unfavorable to it.

Citation of Authority

Motown Record Co. v. DePietro, No. 04-cv-2246, 2007 WL 1725604 (E.D. Pa. June 11, 2007); *Rhein-Hawes v. Vanguard Group, Inc.*, No. 05-cv-665, 2005 WL 3441228, at *2 (E.D. Pa. Dec. 14, 2005).

Exhibit B

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

REGINA DUNN

v.

:

PHRC Docket No.: 200803061

:

EEOC Charge No.: 17F200960834

**CONDOR AUTOMOTIVE GROUP, LLC,
MERCEDES BENZ OF FT. WASHINGTON**

**RESPONDENT'S ANSWER IN OPPOSITION TO COMPLAINANT'S
CHARGE OF DISCRIMINATION**

1. Denied. These allegations are denied as conclusions of law.

2. Admitted.

3. It is admitted that Respondent, Condor Automotive Group, LLC does business at 404 Pennsylvania Ave., Fort Washington, PA 19034. Respondent, Condor, is a management company providing management services to Respondent, Mercedes Benz of Ft. Washington, Inc., which also does business at 404 Pennsylvania Ave., Fort Washington, PA. Only Mercedes Benz of Ft. Washington was Complainant's employer.

Second 3. Denied. The allegations contained in this paragraph are conclusions of law to which no responsive pleading is required. To the extent an answer is deemed required, it is denied that there was any discrimination against Complainant based on her sex or disability/perceived disability and further denied that there was any retaliation against Complainant based on any complaints of harassment or discriminatory conduct.

Allegations of Discrimination Retaliation

A.

[1] Admitted in part, denied in part. It is admitted that Complainant was hired by Steve Silverio, Chief Operating Officer for Condor Automotive Group, LLC to be the General Manager of Mercedes Benz of Ft. Washington on or about October 3, 2007. It is further admitted that at the time of Complainant's hire, Complainant reported to Joseph Esposito, General Manager who in turn reported to Mr. Silverio, Chief Operating Officer who, in turn, reported to Carlos Hoz de Villa, Chief Executive Officer of Condor Automotive Group, LLC. The remaining allegations are denied. At the time of Complainant's discharge, she reported to Paul MacKenzie, General Manager of Mercedes Benz of Fort Washington who reported to Carlos Hoz de Villa, Chief Executive Officer of Condor Automotive Group, LLC. Complainant was discharged because she failed to perform her responsibilities as General Sales Manager in an effective manner, demonstrated a complete lack of candor with the General Manager and participated in business transactions that were not in compliance with the business relationship and rules Respondent had with its creditors and manufacturer resulting in many problems for the dealership.

[2] Denied. The allegations contained in this paragraph are denied as follows:

a. These allegations are specifically denied.

b. These allegations are specifically denied.

c. These allegations are specifically denied.

d. These allegations are specifically denied.

e. These allegations are specifically denied.

f. These allegations are specifically denied.

g. These allegations are specifically denied. While Mr. Silverio did recommend to Mr. Esposito that Complainant needed to be transferred to the position of Finance and

Insurance Manager instead of General Sales Manager, the reason was based solely on Complainant's poor performance as General Sales Manager and not at all based on her gender.

h. These allegations are specifically denied.

i. These allegations are denied as alleged. Mr. Petruziello never called Complainant this name directly.

j. These allegations are denied as alleged. Mr. Petruziello did have issues with Complainant's candor and performance but did not put the issue in these terms.

k. Denied as alleged. It is denied that the issues that Mr. Petruziello and Mr. Silverio had with Complainant were in any way related to her gender or sex. Mr. Petruziello and Mr. Silverio had issues with Complainant's performance as General Sales Manager in that the sales generated by the Sales Department over which she was in charge were lagging. They relied too heavily on fleet sales and there was a significant decline in retail sales under Complainant's management. These performance issues and failings related to the performance of the department were the basis upon which Mr. Silverio recommended a change in position for Complainant to Mr. Esposito and the basis upon which Mr. Petruziello voiced his opinion that she was not getting the job done.

l. These allegations are specifically denied.

m. These allegations are specifically denied.

n. These allegations are specifically denied.

o. These allegations are specifically denied. There was a monthly General Managers meeting. Each month, the General Manager of each store was asked to bring a management person from the store who was being developed for advancement. It was generally a different person each month. Ms. Dunn attended the General Managers meeting at least 2

times. On the occasion when Mr. Palmer, the New Car Manager, was invited to attend, the reason Ms. Dunn was not initially invited is that she had attended the GM meeting the month before. When a request was made by Mr. Esposito to Mr. Silverio for Ms. Dunn to also attend the meeting, arrangements were made for both Ms. Dunn and Mr. Palmer to attend.

p. Denied. It is denied that Mr. Esposito ever raised a concern to Mr. Silverio about any discrepancy between what Ms. Dunn's pay plan was and what she was being paid. The statements attributed to Mr. Silverio in these allegations are specifically denied.

[3] Denied. These allegations are specifically denied.

[4] Denied. These allegations are specifically denied.

a. Denied. It is denied that Steve Silverio ever described Regina Dunn in these terms. It is admitted only that on more than one occasion, Mr. Silverio criticized the performance of the Ft. Washington store because projected sales often overstated actual sales and income at the end of the month by significant amounts and it was the General Sales Manager's responsibility to accurately track and report the sales and the General Manager's obligation to double check that reporting.

b. Denied. This allegation is denied; Mr. Silverio never used that term.

c. Denied. This allegation is denied; Mr. Silverio never used that term.

d. Denied. The only comments regarding the need for Ms. Dunn to be replaced were that Ms. Dunn did not have control over her sales staff and her complaints that everyone is going around her is bad management either at Ms. Dunn's level or Mr. Esposito's level and it needs to stop.

e. Denied. This allegation is denied; Mr. Silverio never made such comments about Ms. Dunn to Mr. Esposito or anyone else.

f. Denied. The only pressure within the first few months of the Ms. Dunn's employment was for the Sales Department to use the Condor reporting systems in place.

g. Denied as alleged. Mr. Petruzillo never directly called Ms. Dunn by this name.

h. Denied. It is denied that Mr. Silverio ever refused to communicate with Regina Dunn during the time frame that she worked for Mr. Esposito.

i. Denied. Any and all criticism of Ms. Dunn's performance was justified. Respondent denies the allegation of harshness. It is admitted that concerns were addressed directly as they are with all employees.

j. This allegation is denied, Mr. Silverio never did this.

k. Denied. Mr. Silverio has no recollection of making such a statement.

l. Admitted in part, denied in part. It is admitted that there was a monthly General Managers meeting. It is further admitted that each month, the General Manager of each store was asked to bring a management person from the store who was being developed for advancement. It was generally a different person each month. Ms. Dunn attended the General Managers meeting at least 2 times. On the occasion when Mr. Palmer, the New Car Manager, was invited to attend, the reason Ms. Dunn was not initially invited is that she had attended the GM meeting the month before. When a request was made by Mr. Esposito to Mr. Silverio for Ms. Dunn to also attend the meeting, arrangements were made for both Ms. Dunn and Mr. Palmer to attend.

m. Denied. It is denied that Mr. Esposito ever raised a concern to Mr. Silverio about any discrepancy between what Ms. Dunn's pay plan was and what she was being paid. The statements attributed to Mr. Silverio in these allegations are specifically denied.

[5] Denied as alleged. It is admitted only that Complainant sent a letter to Mr. Hoz de Villa on August 5, 2008 after she had been advised at a meeting on August 4, 2008 that the performance of the sales department was unacceptable and that she and Mr. Esposito were accountable for the failing of that department and that they had thirty (30) days to address the problem and improve performance.

[6] It is denied without knowledge as to who the employees are that Complainant alleges were aware. It is admitted only that individuals who were asked about information contained in the letter in the course of investigating the substance of the letter were made aware that concern had been raised.

[7] Denied as alleged. It is admitted only that with regard to certain aspects of the letter's contents, an attorney was retained to do the investigation.

[8] Denied. These allegations are denied.

[9] Admitted.

[10] These allegations are specifically denied. Mr. Silverio denies making the alleged statements. Mr. Esposito suggested that Mr. Silverio meet with Ms. Dunn and Mr. Esposito and in the suggestion indicated he did not sign up for this brain damage.

[11] Denied. Mr. Silverio denies ever warning Ms. Dunn to do anything of the sort or threatening her as alleged.

[12] Denied as alleged. This statement is taken out of context. Mr. Silverio indicated that he was not aware of any of the conduct that Ms. Dunn perceived to be undermining, specifically, her claim that Mr. Silverio, by speaking directly to staff of the dealership, he undermined Ms. Dunn's status as General Sales Manager.

[13] Denied as alleged. Complainant was advised that there was no finding of gender or sexual harassment as to Mr. Silverio. There was a decision made to transfer Mr. Silverio to the West Chester facility to eliminate any concern about any further problem.

[14] Admitted in part, denied in part. It is admitted that Joseph Esposito was discharged on or about October 6, 2008. It is denied that there was any statement about downsizing made to Mr. Esposito. Mr. Silverio made clear that Mr. Esposito's discharge was based on his poor performance as General Manager. It is admitted that Mr. Esposito was replaced by Paul MacKenzie.

[15] Denied. These allegations are specifically denied.

[16] Denied. Mr. Silverio was transferred to the position of General Manager of the West Chester dealership in October 2008 because of the decline in the economy and its impact on car sales requiring a downsizing of upper management. Mr. Silverio would have no responsibility for communicating with Complainant in this position. The allegations as to Paul MacKenzie are specifically denied.

[17] Admitted in part, denied in part. It is admitted that Complainant was discharged on or about November 4, 2008. Mr. MacKenzie was the decision maker regarding this and he made it clear to Complainant in the discharge meeting that she was being discharged due to her performance and her involvement in transactions that put the dealership in jeopardy with the law and with Mercedes Benz. It is denied Complainant was told her position was being eliminated.

[18] Admitted in part, denied in part. It is admitted that a new General Sales Manager was hired for Mercedes Benz of Fort Washington.

[19] Denied. Respondent's employment decisions relating to Regina Dunn were all made for legitimate, non-discriminatory and non-retaliatory reasons. Specifically, Ms. Dunn had

failed to perform her job effectively under the management of Joseph Esposito and received a warning to this effect on August 4, 2008. After Mr. Esposito was discharged, Complainant was given an opportunity to prove herself to the new General Manager, Paul MacKenzie but failed to do so by: 1. Failing to be honest with Mr. MacKenzie about certain business transactions in which Ms. Dunn and Mr. Esposito had committed the dealership which were against the dealership's interest; 2. Going against Mr. MacKenzie's direct orders regarding the dollar amount for which a vehicle would be repurchased from a prior buyer; 3. Failing to report the use of inventory by customers placing the dealership in jeopardy of violation of its floor plan agreement; and 4. demonstrating a general lack of candor and commitment to work as a teamplayer with Paul MacKenzie as General Manager.

[20] Denied. Respondents have policies in place and staff is trained on those policies to prevent unlawful discrimination and harassment in the work place.

[21] Denied. Respondents have policies in place and staff is trained on those policies to prevent unlawful discrimination and harassment in the work place.

[22] These allegations are denied as conclusions of law and fact.

4. Denied as conclusions of law or fact.
5. Denied as conclusions of law or fact.
6. Denied.

WHEREFORE, Respondents pray that Complainant's Complaint be dismissed for lack of probable cause and judgment be entered in favor of Respondents and against Complainant.

AMENDED COMPLAINT

A. [1] Admitted in part, denied in part. It is admitted that Complainant was hired by Steve Silverio, Chief Operating Officer for Condor Automotive Group, LLC to be the General

Manager of Mercedes Benz of Ft. Washington on or about October 3, 2007. It is further admitted that at the time of Complainant's hire, Complainant reported to Joseph Esposito, General Manager who in turn reported to Mr. Silverio, Chief Operating Officer who, in turn, reported to Carlos Hoz de Villa, Chief Executive Officer of Condor Automotive Group, LLC. The remaining allegations are denied. At the time of Complainant's discharge, she reported to Paul MacKenzie, General Manager of Mercedes Benz of Fort Washington who reported to Carlos Hoz de Villa, Chief Executive Officer of Condor Automotive Group, LLC. Complainant was discharged because she failed to perform her responsibilities as General Sales Manager in an effective manner, demonstrated a complete lack of candor with the General Manager and participated in business transactions that were not in compliance with the business relationship and rules Respondent had with its creditors and manufacturer resulting in many problems for the dealership.

2. It is admitted that Complainant was discharged from employment on November 4, 2008.

3. Admitted in part, denied in part. It is admitted that a complaint was filed, the exact date of filing is not known. It is admitted that Respondents were served with a copy of the complaint.

4. Denied.

5. Denied. These allegations are specifically denied.

6. Denied. These allegations are specifically denied.

7. Denied. As the allegation of any further retaliatory conduct is denied, so are these allegations.

8. Denied as a conclusion of law or fact.

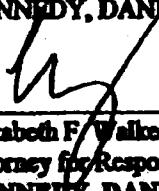
9. Denied as a conclusion of law or fact.

10. Denied as a conclusion of law or fact.

B. Denied as a conclusion of law or fact.

WHEREFORE, Respondents pray that Complainant's Complaint be dismissed based on a lack of probable cause and based on lack of merit.

KENNEDY, DANIEL & LIPSKI



Elizabeth F. Walker, Esquire
Attorney for Respondents
KENNEDY, DANIEL & LIPSKI
1818 Market Street, Suite 2510
Philadelphia, PA 19103
(215) 430-6386
(215) 430-6351 (fax)
Attorney ID No.: 43550
Beth.Walker@Zurichna.com

Verification

I, Steve Silverio verify that the statement made in the foregoing Verified Answer to Complaint are true and correct to the best of my knowledge and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

Dated: 5/25/09

By: [Signature]

C.O.O

Exhibit C

**Regina Dunn vs Condor Automotive Group, LLC, et al.; Mercedes-Benz of Fort
Washington**

PHRC Case No.200803061

EEOC No. 17F200960834

Certificate of Service

Pursuant to the requirements of 1 Pa. Code § 33.31, I hereby certify that I
have this day served the foregoing Complaint by first class mail, postage prepaid, as
follows:

Regina Dunn

Maple Glen PA 19002

**Caren N. Gurmankin Esquire
1525 Locust Street, 9th Floor
Philadelphia PA 19102**

**Condor Automotive Group, LLC, et al.;
Mercedes-Benz of Fort Washington
404 Pennsylvania Avenue
Fort Washington PA 19034**

Dated 16th day of January, 2009

Sokun Nov
Sokun Nov

Exhibit D

Paul Mackenzie
300 Kennard Road
Perkasie, PA 18944

Regina Dunn and Andrew Mogilyansky

October 6th 2008 – I met Regina Dunn for the first time and told her that I was aware she had a long relationship with the previous General Manager, but whatever went on in the dealership before my arrival was in the past. If she was forthright, it would have no bearing on her future employment. I assured her that if she gave me a complete update on ALL open issues in the dealership (good and bad) and her full and candid support, I would consider keeping her in her current position. I made it clear this was an on the job interview.

October 8th 2008 – By the end of the day I had already caught Regina Dunn in several serious lies and again I urged her to be candid. I also asked why she spent hours walking around the dealership, talking on her cell phone in an animated fashion. She said was talking to her children's nanny and she assured me these conversations would end soon. I suspected she was talking to Joe Esposito (covering tracks) and I said so. She neither confirmed or denied this, she just walked away. I told Steve Silverio of these events but he gave no input. I pushed further and told him I also didn't believe she had the requisite skills for her position. He told me to give it another week and consider her for a finance position. I told him I would; but reluctantly.

October 9th – I moved my (actual) desk into Regina's office to watch her work and assess her desk and turn over skills up close. My fears were confirmed immediately and in my opinion she was a substandard desk person at best and her turn over skills were very combative. In many cases she alienated customers, and in some instances she got into arguments with them. I apprised Steve Silverio of these findings and again I asked to be allowed to fire her. He merely reminded me of his proviso on hiring me (*see attachment – The Interview Process*) and refused.

October 10th – I met Andrew Mogilyansky for the first time. He was evasive, arrogant, and rude, and had the audacity to sit at the desk in the General Manager's office (my office) without asking permission and then log on to the MBUSA Net Star system through his laptop. I immediately unplugged his ethernet connection and asked how he got this access. He said he had carte blanche to order his own cars via Joe Esposito and Regina Dunn. They even allowed him to use their passwords. I immediately put a stop to this and made it clear that to continue to do business with Mercedes-Benz of Fort Washington he needed to FULLY explain his business model to me.

He then briefly explained that he shipped cars to the Ukraine and had found a way to cheat the MBUSA system of tracking cars through the PIERS reports. I asked him to go into more detail but he said he had no time and would come back in a few days when he did. I made it clear again

that I was now in charge and if he did not keep this promise I would shut him down. I reported these events to Steve Silverio who asked that I keep this next appointment and report back.

October 13th – I met Andrew Mogilyansky for the second time and we spent two hours together going over his business model. He was evasive on many points but I made it lucid (again) that until I was happy with his explanations, any business with Mercedes-Benz of Fort Washington was over. He left the meeting clearly agitated. What I had learned so far was that that Mr. Mogilyansky's business model was predicated on the favorable exchange rate between the Euro over the Dollar and as soon as they begin to equal out, he would have an inventory of cars in Bremerhaven, Germany with a reducing value. In other words, distressed merchandise! I asked him how long he could finance that anomaly before shipping the cars elsewhere and he simply stated, "For a while!"

October 14th – I spoke to Steve Silverio and relayed my findings, insisting that the company immediately cease and desist doing business with Mr. Mogilyansky as we would most certainly face massive charge backs from what we had sold him already. I also told Steve that I suspected that Regina Dunn was in bed with Mr. Mogilyansky (financially) and insisted once more that she be terminated. He declined on both counts and finally told me why. Regina Dunn was threatening to sue Steve Silverio for sexual harassment and firing her now, could trigger this event. I was livid that I was not told the truth about this, or Mr. Mogilyansky and I said so. Mr. Silverio apologized and said he would get back to me in a few days with some direction. I told him I had another meeting with Mr. Mogilyansky in two days and I needed an answer by then. I didn't hear from Mr. Silverio before that meeting.

October 16th – I met Andrew Mogilyansky for the third time and he was desperate to order more vehicles. I still refused unless he was completely candid and answered ALL of my questions this time. He began to open up and I learned a great deal, including the fact that he had several hundred cars sitting in Germany. 150 of these were from Mercedes-Benz of Fort Washington! At this point I categorically stated that I would sell him no more cars. He merely smiled and said he had a meeting the next day with Steve Silverio to work it all out.

October 17th – I finally got in contact with Steve Silverio who rushed me off the phone and refused to acknowledge he had a meeting with Mr. Mogilyansky that day. Feeling uneasy, I reached out to Carlos Hoz de Vila,

October 20th – As soon as Carlos Hoz de Villa arrived at work I attended a meeting with him and Vince to explain what I had found. They listened intently and when I had finished Vince became extremely angry and yelled at Carlos, *"I told you we should never have listened to Steve!"* Carlos thanked me and told me he would talk to Steve and get back to me. Before I left the office, they asked what our exposure was and I told them it was over \$1,000,000. The look on their faces was pure shock. I also gave them my suspicions about Regina Dunn and asked if I could fire her. Vince agreed that it was time but he wanted to consult an attorney first.

October 21st – I was informed by Carlos and Vince that Steve Silverio still had confidence in Andrew Mogilyansky's business model and from this point forward Steve would handle ALL interactions with him. I told them they were making a bad decision and insisted that when the charge backs came in, my pay plan would not be affected by it. They agreed immediately. I had no more contact with Mr. Mogilyansky except to nod hello as he came through my showroom.

October 22nd – I spoke to an attorney in Vince's office (via phone) about Regina and he told me what to say and how to say it. He also insisted that Steve Silverio have no part in it, but either Carlos or Vince should be present. It was decided Carlos would be there.

November 3rd – I fired Regina Dunn in the presence of Carlos Hoz de Villa!

The Running Total of Charge backs so far

Current Fleet Incentive Charge backs for 2009 - \$86,850

+

Other related charge backs in April 2009 - \$10,150.00

Other related charge backs in August 2009 - \$9,664.00

Other related charge backs in September 2009 - \$188,053.00

Other related charge backs in October 2009 - \$91,102.00

Other related charge backs in November 2009 (So far) - \$108,506.00

Other related charge backs in December 2009 – (No Input Yet)

Current Total Other related charge backs - \$385,819.00

Running Total of ALL Charge Backs - \$494,325

Potential Future Chargeback Total - >\$500,000.00

Exhibit E

Paul Mackenzie

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REGINA DUNN, JOSEPH ESPOSITO :

and :

PATRICE MACHIKAS :

Plaintiffs, :

v. : Civil Action
No. 10-1662

CONDOR AUTOMOTIVE GROUP, LLC. :
MERCEDES-BENZ of FORT
WASHINGTON, STEPHEN SILVERIO :
AND VINCENT PETRUZZIELLO :

Defendants. :

Philadelphia, Pennsylvania
Monday, April 25, 2011

Deposition of PAUL MACKENZIE,
taken pursuant to notice, held at the Console
Law Offices, LLC, 1525 Locust Street,
Philadelphia, Pennsylvania, beginning at
10:05 a.m., on Monday, April 25, 2011, before
Terry Barbano Burke, RMR-CRR.
TERRY BURKE REPORTING
(215) 205-8079
terryburkerm@gmail.com

Page 1

1 ALSO PRESENT:

2 REGINA DUNN

3 PATRICE MACHIKAS

6 PAUL MACKENZIE, [REDACTED]

7 [REDACTED] Parkside, Pennsylvania, 18944,

8 having been duly sworn, was examined
9 and testified as follows:

10 BY MR. CONSOLE:

11 Q. Good morning, Mr. Mackenzie.

12 A. Good morning.

13 Q. My name is Steve Console. Together with
14 Karen Gurmankin, who is seated to my left, we
15 have the privilege of representing Regina Dunn
16 and Joe Esposito in connection with their
17 complaints of retaliation and discrimination.

18 Seated further to my left is Robert
19 Davitch. He has the privilege of representing
20 Patrice Machikas in connection with her
21 complaints of discrimination and retaliation.

22 I'm here today to ask you a series
23 of questions pertaining to this matter. If at
24 any time, for any reason, you wish to take a

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1 APPEARANCES:

2 STEPHEN G. CONSOLE, ESQUIRE
3 CAREN N. GURMANIKIN, ESQUIRE
4 Console Law Offices, LLC
5 1425 Locust Street
6 Philadelphia, Pennsylvania 19102
7 Counsel for the Plaintiffs
8 Regina Dunn and Joseph Esposito

9 ROBERT A. DAVITCH, ESQUIRE
10 Sidoff, Pincus & Green, P.C.
11 2700 Archway Tower
12 1101 Market Street
13 Philadelphia, Pennsylvania 19107

14 Counsel for the Plaintiff
15 Patrice Machikas
16 ELIZABETH F. WALSH, ESQUIRE
17 Kennedy Campbell Lipkai & Dochow
18 1818 Market Street, Suite 2510
19 Philadelphia, Pennsylvania 19103

20 Counsel for the Defendants
21 Condor Automotive Group, LLC
22 and Mercedes-Benz of Fort
23 Washington, Inc.

24 WILLIAM E. DENGELER, ESQUIRE
Handcock & Lloyd
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CHRISTOPHER A. TIANI, ESQUIRE
Margolis Edelman
The Curtis Center, 4th Floor
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Philadelphia, Pennsylvania 19106
Counsel for the Defendant
Vincent Petruzzello

Page 2

1 break, please let me know and we will take a
2 break to suit your convenience. I will only ask
3 that any then pending questions be answered
4 before we take a break.

5 Do you understand that?

6 A. Yes, I do.

7 Q. If there's any question that I ask you
8 that you don't understand, please let me know.
9 Please try to answer every question with a
10 verbal response as opposed to a nod of the head.

11 Do you understand that?

12 A. Yes.

13 Q. The most important instruction that I
14 can give you is that although this deposition is
15 being conducted in our office, it has the same
16 force and effect as if you were testifying in
17 federal court, before a federal judge and a
18 federal jury. If you do not tell the truth, and
19 that would include saying you don't recall if
20 you do recall, and are convicted of that, that's
21 perjury and you can go to jail for that.

22 Do you understand that?

23 A. Yes.

24 Q. And I believe this is the first time in

Page 4

1 (Pages 1 to 4)

Paul Mackenzie

<p>1 connection with these issues that are present in 2 this case that you are under oath. Am I correct 3 about that? 4 A. I don't remember. 5 Q. I don't believe that you submitted any 6 document under oath before today. 7 A. I have not submitted any documents, but 8 I do not remember whether I was under oath when 9 I spoke in Jersey — or, sorry, in Media. 10 MS. WALKER: Correct, in Media. 11 THE WITNESS: I do not remember. 12 BY MR. CONSOLE: 13 Q. In Media? 14 A. The place you — 15 Q. At a mediation? 16 A. Media. 17 MS. WALKER: Media is a place. 18 Mediation was the event. 19 BY MR. CONSOLE: 20 Q. I think we can all say when you speak at 21 a mediation, are you not under oath. 22 A. Okay. 23 Q. So this is the first time you are 24 providing any testimony under oath. You</p> <p style="text-align: right;">Page 5</p>	<p>1 documents relating to or referring to your 2 employment with and/or termination from Condor 3 Automotive Group, LLC, and/or Mercedes-Benz of 4 Fort Washington, including, but not limited to, 5 all e-mail and other communications between you 6 and any employee or former employee of 7 defendants." 8 Do you see what I've read? 9 A. Yes. 10 Q. Have you brought any documents with you 11 today? 12 A. Yes. 13 Q. What documents have you brought? 14 A. The documents I brought were exactly 15 what you asked for, any e-mails or anything that 16 happened. 17 Q. Can you produce those, please. 18 A. (Pause.) 19 Q. Placed in front of you are the documents 20 you produced in response to the subpoena? 21 A. Yes, they are. 22 Q. Can I see those, please? 23 A. (Witness complies.) 24 Q. Let me identify these.</p> <p style="text-align: right;">Page 7</p>
<p>1 understand that? 2 A. Yes. 3 Q. And if you do not answer truthfully, 4 that's perjury. Do you understand that? 5 A. Yes, I do. 6 Q. Let's have this document marked as the 7 next, I think we are up to 65. 8 (P-65 was marked for 9 identification.) 10 BY MR. CONSOLE: 11 Q. Mr. Mackenzie, I'm showing you a 12 document marked P-65. This is a letter from 13 Caren Gurmankin dated March 7th with an enclosed 14 subpoena. 15 A. Uh-huh. 16 Q. This document was served upon you; 17 correct? 18 A. Yes. 19 Q. And this document on Page 3, the first 20 page of the subpoena, asked you to bring certain 21 documents to this deposition. 22 Do you see where I'm referring to? 23 A. Yes. 24 Q. It asks for you to produce "all</p> <p style="text-align: right;">Page 6</p>	<p>1 The first is a November 13, 2009, 2 memo to Joann George, three pages long. Have I 3 identified that correctly, Mr. Mackenzie? 4 A. You have. 5 Q. The second is a two-page document 6 called "Interview Process." 7 Have I identified that correctly? 8 A. You have. 9 Q. The third is a three-page document 10 entitled "Regina Dunn and Andrew Mogilyansky." 11 Have I identified that correctly? 12 A. You have. 13 Q. Then the last is a two-page document 14 called "The Job Threat." Have I identified that 15 correctly? 16 A. You have. 17 Q. Where did you obtain these documents? 18 A. These are documents that I sent. 19 Q. Where did you find them to comply with 20 this subpoena? 21 A. I kept copies of the documents, I wrote 22 them on my computer, so I accessed them from 23 copies of my computer. 24 Q. Did you go on your computer?</p> <p style="text-align: right;">Page 8</p>

Paul Mackenzie

<p>1 A. Yes.</p> <p>2 Q. On your computer you still have</p> <p>3 documentation relating to Condor?</p> <p>4 A. That is the documentation I have.</p> <p>5 Q. This is it?</p> <p>6 A. Correct.</p> <p>7 Q. There are no other e-mails?</p> <p>8 A. Correct.</p> <p>9 Q. Or no e-mails at all?</p> <p>10 A. Correct.</p> <p>11 Q. This information that you produced has</p> <p>12 previously been marked as Exhibit P-46. If you</p> <p>13 can turn to Exhibit P-46 in the book.</p> <p>14 Am I correct, sir, that P-46</p> <p>15 matches exactly the documents that you produced</p> <p>16 this morning?</p> <p>17 A. Yes.</p> <p>18 Actually, there's one more page</p> <p>19 that you have -- I'm sorry. No, you don't. It</p> <p>20 matches.</p> <p>21 Q. Everything's the same?</p> <p>22 A. Uh-huh.</p> <p>23 Q. If you look off the Exhibit P-46, and we</p> <p>24 can use that document because there's Bates</p> <p style="text-align: right;">Page 9</p>	<p>1 preparing the first three pages of Exhibit P-46?</p> <p>2 MS. WALKER: Objection to the form.</p> <p>3 THE WITNESS: I don't quite</p> <p>4 understand the question. Memos?</p> <p>5 BY MR. CONSOLE:</p> <p>6 Q. Let me make sure I understand your</p> <p>7 answer.</p> <p>8 In preparing the first three pages</p> <p>9 of P-46, I believe you say you accessed certain</p> <p>10 documentation on your computer?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. I think you indicated that you accessed</p> <p>15 e-mails; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you access anything else?</p> <p>18 A. Anything I accessed would be a series of</p> <p>19 notes or stuff that I put together from memory.</p> <p>20 I have a habit of chronicling series of events</p> <p>21 at the workplace. So what I will do is I will</p> <p>22 keep an open Word document and I'll add to it.</p> <p>23 If it's something of significance that I think I</p> <p>24 should remember, then I will write it down.</p> <p style="text-align: right;">Page 11</p>
<p>1 stamp numbers, the first page is 3750. Do you</p> <p>2 see the number in the lower right-hand corner?</p> <p>3 A. Yes.</p> <p>4 Q. That goes through 3752; correct?</p> <p>5 A. Yes.</p> <p>6 Q. When was this document prepared?</p> <p>7 A. I would say in the two or three days</p> <p>8 before I sent it.</p> <p>9 Q. So some time in November of 2009?</p> <p>10 A. Yes.</p> <p>11 Q. Was this document prepared from looking</p> <p>12 at notes that you had or was this prepared from</p> <p>13 memory?</p> <p>14 A. This was prepared from both, and the</p> <p>15 notes that I had at the time I had on my</p> <p>16 computer at work.</p> <p>17 Q. How were they stored on your computer at</p> <p>18 work?</p> <p>19 A. In a Word document on my desk, and I</p> <p>20 would copy myself on e-mails, again, at the work</p> <p>21 address.</p> <p>22 Q. Putting aside the e-mails that you</p> <p>23 copied yourself on, did you also access some</p> <p>24 memos that you had prepared to assist you in</p> <p style="text-align: right;">Page 10</p>	<p>1 Q. Was it stored under a certain file name?</p> <p>2 A. Miscellaneous.</p> <p>3 Q. And did you access these notes to assist</p> <p>4 you in preparing the first three pages of</p> <p>5 Exhibit P-46?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know how many pages of notes you</p> <p>8 had?</p> <p>9 A. They would be line items, just maybe</p> <p>10 memory tickers. So maybe a couple of pages.</p> <p>11 Q. Am I correct that these notes would be</p> <p>12 typed into your computer at or around the time</p> <p>13 of the occurrence?</p> <p>14 A. They were from the very beginning. It's</p> <p>15 a memory jog for me. I usually have good recall</p> <p>16 so I'll write a line, and as I read that line it</p> <p>17 usually expands backwards and forwards in my</p> <p>18 mind and I remember the series of events.</p> <p>19 Q. Did you send a copy of these notes to</p> <p>20 your personal computer at home?</p> <p>21 A. I had thought that I did, but I couldn't</p> <p>22 find anything on my home computer, but probably</p> <p>23 about six months ago I reread everything. I</p> <p>24 don't remember seeing them at that time, but I</p> <p style="text-align: right;">Page 12</p>

3 (Pages 9 to 12)

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<p>1 thought I sent them to myself. But I couldn't</p> <p>2 find them at home and I'm very good at finding</p> <p>3 things.</p> <p>4 So maybe — because I also got rid</p> <p>5 of a lot of stuff on my computer. I bought a</p> <p>6 new computer and I moved stuff over, so I may</p> <p>7 have got rid of it.</p> <p>8 Q. When did you get rid of stuff on your</p> <p>9 computer at home?</p> <p>10 A. I went to a digital copy of all of the</p> <p>11 movies and stuff that I have, and I put my</p> <p>12 office computer in my living room and I needed</p> <p>13 the memory space, so I started just</p> <p>14 housecleaning.</p> <p>15 Q. When?</p> <p>16 A. Probably about six months ago.</p> <p>17 Q. Did you receive at any time any</p> <p>18 notification from counsel for Condor that you</p> <p>19 should not destroy any information that is</p> <p>20 pertinent to this case?</p> <p>21 A. No.</p> <p>22 Q. Am I correct that about six months ago</p> <p>23 you may have destroyed these notes that you used</p> <p>24 to help prepare the document marked as P-46?</p> <p style="text-align: right;">Page 13</p>	<p>1 with this.</p> <p>2 Q. Is it your testimony you believe you</p> <p>3 also sent your notes to your home computer?</p> <p>4 A. No. My testimony is I think I did, but</p> <p>5 I'm just not sure.</p> <p>6 Q. In any event, they should be at the</p> <p>7 computer at work; is that correct?</p> <p>8 MS. WALKER: Objection to the form.</p> <p>9 BY MR. CONSOLE:</p> <p>10 Q. In other words, when you were fired from</p> <p>11 Condor, did you destroy those notes?</p> <p>12 A. No, but I was informed, when I wanted</p> <p>13 some personal information from my computer, that</p> <p>14 they had erased the hard drive.</p> <p>15 Q. Who told you that?</p> <p>16 A. The IT gentleman.</p> <p>17 Q. Who was that?</p> <p>18 A. James Bell.</p> <p>19 Q. When did he tell you that?</p> <p>20 A. Probably about 10 days after I was</p> <p>21 fired.</p> <p>22 Q. After you were fired. What day were you</p> <p>23 fired?</p> <p>24 A. I don't remember.</p> <p style="text-align: right;">Page 15</p>
<p>1 MS. WALKER: Objection to the form.</p> <p>2 THE WITNESS: I don't think so. I</p> <p>3 think that's something I would have kept.</p> <p>4 BY MR. CONSOLE:</p> <p>5 Q. You believe that you did have these</p> <p>6 notes?</p> <p>7 A. Well, going back to, I think that's</p> <p>8 something I would have copied myself on, but</p> <p>9 going through my computer, looking for it, I</p> <p>10 didn't find it. I have no memory of deleting</p> <p>11 it, and it's probably something I wouldn't have</p> <p>12 done anyway, so maybe I was just mistaken about</p> <p>13 sending them to myself.</p> <p>14 Q. When is the last time you looked at</p> <p>15 these notes?</p> <p>16 A. My recollection would be the last time I</p> <p>17 actually remember seeing them was in the week</p> <p>18 before I composed it.</p> <p>19 Q. And P-46, did you compose this from</p> <p>20 home?</p> <p>21 A. No. I did this at work.</p> <p>22 Q. Why did this end up on your home</p> <p>23 computer?</p> <p>24 A. Because I copied myself with an e-mail</p> <p style="text-align: right;">Page 14</p>	<p>1 Q. Approximately?</p> <p>2 A. March 1st. I'm sorry, it was March 1st.</p> <p>3 Q. March 1st of 2010?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. So after you're fired on March 1st, you</p> <p>6 have a conversation with James Bell; correct?</p> <p>7 A. Yes. About a week to ten days later,</p> <p>8 just in casual, I said, "James, I believe</p> <p>9 there's some stuff I have left on my computer,</p> <p>10 personal stuff." That personal stuff being</p> <p>11 things to do with my mother. And James said,</p> <p>12 "Yeah, I don't think there's anything left on</p> <p>13 your computer." I said, "Will you do me a favor</p> <p>14 and check?" And he did. He said, "Yeah,</p> <p>15 there's nothing left." "Could you save anything</p> <p>16 that's important to me with regard to my</p> <p>17 mother?" "There's nothing left." "Okay."</p> <p>18 Q. Did he tell you that the hard drive had</p> <p>19 been erased?</p> <p>20 A. No. He said there's nothing left.</p> <p>21 Q. What did you understand that to mean?</p> <p>22 A. That the hard drive had been erased.</p> <p>23 Q. In the hard drive would have been, in</p> <p>24 addition to personal matters, these notes that</p> <p style="text-align: right;">Page 16</p>

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1 you referred to earlier?
 2 A. Yes.
 3 Q. And they would have been a hard drive
 4 stored on your file called miscellaneous?
 5 A. Yes.
 6 Q. And when you said there are line items,
 7 would there be about 30 line items?
 8 MS. WALKER: Objection to the form.
 9 THE WITNESS: Maybe more.
 10 BY MR. CONSOLE:
 11 Q. After you were terminated, did you sign
 12 a release agreement?
 13 A. No.
 14 Q. Were you offered a release agreement?
 15 A. Yes.
 16 Q. Did you keep a copy of that?
 17 A. No.
 18 Q. You just threw it away?
 19 A. No. I refused to take it.
 20 Q. You refused to accept it?
 21 A. (Witness nods.)
 22 Q. Why?
 23 A. It was insulting.
 24 Q. Why?

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1 A. A difficult question to answer, so give
 2 me a second. Let me see if I can put it in
 3 words.
 4 In the course of my exit interview,
 5 I was told alternatively that I was being laid
 6 off, terminated, laid off. It went back and
 7 forth between the two, and I thought it was
 8 amusing. So I said, "You need to be very
 9 careful about the terminology." And
 10 Mr. Silverio said, "Well, now you're threatening
 11 me with legal action so I can't talk to you any
 12 more." So I said, "Okay, that's a huge leap.
 13 I'm not threatening you with legal action. I
 14 just find it amusing."
 15 And he said, "Well, you're going to
 16 take this money or you're not going to take this
 17 money." I said, "No, I'm not going to take it."
 18 Q. Is this a one-on-one meeting?
 19 A. No. Joann George was there.
 20 Q. What day was this?
 21 A. The same day, so if March 1st fell on a
 22 Monday.
 23 Q. Is this the first time you heard you
 24 were going to be fired?

Page 18

1 A. Yes.
 2 Q. Who set up the meeting?
 3 A. Mr. Silverio.
 4 Q. Where was the meeting held?
 5 A. In what was the general manager's office
 6 in the rear of the showroom in Fort Washington.
 7 Q. In the meeting, then, was you,
 8 Mr. Silverio and Miss George?
 9 A. Correct.
 10 Q. Tell me everything that was said in this
 11 meeting?
 12 A. That Mr. Silverio was purchasing the
 13 dealership. That the group of investors who
 14 owned it, Park Avenue, were putting pressure on
 15 him to perform up to the promises he and Carlos
 16 Hoz de Vela had made to them, and they were only
 17 going to let him purchase the dealership if he
 18 cut costs, so he was taking over the dealership
 19 as general manager, therefore, I was being laid
 20 off.
 21 Q. Anything else?
 22 A. My response was, "Okay." His response
 23 was, "We would like to offer you a severance
 24 package," and he tried to hand me a piece of

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1 paper. And I said, without picking it up or
 2 looking at it, "Tell me the gist of what your
 3 severance package is." And I think he said
 4 something along the lines of \$5,000 a month -
 5 I'm sorry, that's not correct.
 6 What he said was - well, what you
 7 have been earning over the last year, we'll give
 8 you that for the next three months. So I did a
 9 quick calculation in my head. I earned 210 the
 10 year before, so I did the calculation. I said,
 11 "So what you're offering me is an average salary
 12 of, times three?" "Absolutely not, you're not
 13 worth that, I'm not paying you that."
 14 I said, "Then, what is the gist?"
 15 He said, "I think it's \$5,000 a month," at which
 16 point I left and at which point I had decided
 17 that I didn't really want any part of it.
 18 Then the other conversation
 19 happened, you're terminated, you're laid off,
 20 you're terminated.
 21 Q. What did he say, try to be as specific
 22 as you can as to what was then said after you
 23 rejected the severance offer?
 24 A. I mentioned his math skills were

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5 (Pages 17 to 20)

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<p>1 A. Sansone, S-A-N-S-O-N-E.</p> <p>2 Q. When was that?</p> <p>3 A. It's got to be 15 years ago. Maybe</p> <p>4 longer.</p> <p>5 Q. What position did you hold there?</p> <p>6 A. General manager.</p> <p>7 Q. Where were you working immediately prior</p> <p>8 to working for Condor?</p> <p>9 A. Dealer Track.</p> <p>10 Q. From when to when?</p> <p>11 A. I don't remember, but I was still</p> <p>12 actually working there when I went for the</p> <p>13 interview, which was about a month before I was</p> <p>14 hired, and I was probably only there four or</p> <p>15 five months.</p> <p>16 Q. So did you start at Dealer Track in</p> <p>17 2008?</p> <p>18 A. Yes.</p> <p>19 Q. Would it have been the spring of 2008?</p> <p>20 A. Yes.</p> <p>21 Q. What position did you have?</p> <p>22 A. It changed a couple of times. Maybe</p> <p>23 district manager.</p> <p>24 Q. Where were you working out of?</p> <p style="text-align: right;">Page 41</p>	<p>1 Q. Before Dealer Track, was that Reedman</p> <p>2 Toll?</p> <p>3 A. Yes. But in between, whenever I was</p> <p>4 unemployed -- from the year that I left Reedman</p> <p>5 Toll, for the next year, I didn't work at all.</p> <p>6 I worked on a private project, personal project.</p> <p>7 But before Reedman Toll, and two or three times</p> <p>8 since then, I worked for different mortgage</p> <p>9 companies that were all basically the same</p> <p>10 company, but went through bankruptcies, name</p> <p>11 changes. I may have worked, may have done some</p> <p>12 consulting work for them. I would have to</p> <p>13 check.</p> <p>14 Q. What company are we talking about?</p> <p>15 A. I think the last reincarnation of it was</p> <p>16 JDS Mortgage Brokers, Inc.</p> <p>17 Q. You worked for the various versions of</p> <p>18 that company a total of how many years?</p> <p>19 A. All in all, probably three years in</p> <p>20 different spurts.</p> <p>21 Q. You say that when you lost your position</p> <p>22 at Reedman you were unemployed for a year?</p> <p>23 A. Correct.</p> <p>24 Q. So would that indicate that you last</p> <p style="text-align: right;">Page 43</p>
<p>1 A. My home.</p> <p>2 Q. Where was that?</p> <p>3 A. 300 Kennard Road.</p> <p>4 Q. In what town?</p> <p>5 A. Pertuisle.</p> <p>6 Q. That's where you currently reside?</p> <p>7 A. Correct.</p> <p>8 Q. What is Dealer Track?</p> <p>9 A. It is a portal between a dealer and</p> <p>10 banks, so basically what they do is you would</p> <p>11 call your credit applications through the dealer</p> <p>12 track system, who would send it to a bank and</p> <p>13 keep the transaction secure, as well as</p> <p>14 supplying the documents to execute a deal and</p> <p>15 the storage of documents.</p> <p>16 Q. Who were you reporting to?</p> <p>17 A. Dave Kotfila.</p> <p>18 Q. Did you know him before you started</p> <p>19 there?</p> <p>20 A. No.</p> <p>21 Q. Did you resign from this position to --</p> <p>22 A. Yes.</p> <p>23 Q. -- commence working with Condor?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 42</p>	<p>1 worked at Reedman some time in 2008?</p> <p>2 MS. WALKER: Objection to the form.</p> <p>3 THE WITNESS: I don't remember. I</p> <p>4 thought it was 2005, but again, I'm just trying</p> <p>5 to backtrack and fill in the numbers.</p> <p>6 BY MR. CONSOLE:</p> <p>7 Q. So it would have been 2005 or 2006 at</p> <p>8 the latest?</p> <p>9 A. I think so.</p> <p>10 Q. And then you say for a year you weren't</p> <p>11 employed, you were working on a project?</p> <p>12 A. Correct.</p> <p>13 Q. What project was that?</p> <p>14 A. I wrote two books, so I took the year</p> <p>15 off and I finished those two books.</p> <p>16 Q. What types of books?</p> <p>17 A. Fiction.</p> <p>18 Q. Novels?</p> <p>19 A. Yes.</p> <p>20 Q. Were they published?</p> <p>21 A. No.</p> <p>22 Q. Did you have any income coming in during</p> <p>23 that period?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 44</p>

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<p>1 a GSM at Mercedes-Benz Fort Washington with 2 anyone?</p> <p>3 A. Yes. The guy who ended up being the 4 general sales manager.</p> <p>5 Q. That's David Reedman?</p> <p>6 A. Correct.</p> <p>7 Q. When did you first discuss with David 8 Reedman the possibility of being a GSM in Fort 9 Washington?</p> <p>10 A. Before I met Carlos Hoz de Vila, so 11 probably the week before that I met him for 12 lunch and I asked him -- I told him, "I have 13 nothing, I don't have a job offer. I have a 14 possibility." "Should the possibility arise and 15 I need a general sales manager, would you be 16 willing to talk about it?"</p> <p>17 "Where, when, when can I start?"</p> <p>18 None of the above. "I'm not going to tell you 19 where it is, because I don't even have a job. 20 I'm just asking, would you be?"</p> <p>21 Q. And what was his response?</p> <p>22 A. He had been at the same place since he 23 was 18, so he had been at the same place for 35 24 years and he needed to think about it.</p> <p style="text-align: right;">Page 105</p>	<p>1 Q. Did you think he was instructing you 2 that you were not able to fire her?</p> <p>3 A. Yes.</p> <p>4 Q. Did he tell you why?</p> <p>5 A. Later he did, but at that particular 6 point in time, no.</p> <p>7 Q. At some point he did tell you why?</p> <p>8 A. Yes.</p> <p>9 Q. What did he tell you was the reason why 10 he couldn't fire her?</p> <p>11 A. That she had filed suit against the 12 company, against him personally. They had to 13 get mediators there, and someone came down and 14 questioned everybody and it probably wouldn't be 15 a good idea to fire her.</p> <p>16 Q. When did you first learn that a female 17 had made a complaint of sex discrimination at 18 Condor?</p> <p>19 A. I don't think I was ever told by anyone 20 at Condor, from Steve or Carlos for quite a few 21 months.</p> <p>22 The issue with Regina got to me 23 through the salespeople on the showroom floor.</p> <p>24 Q. Who was the first person who told you</p> <p style="text-align: right;">Page 107</p>
<p>1 Q. Generally positive?</p> <p>2 A. I would say so.</p> <p>3 Q. What made you reach out to him?</p> <p>4 A. Standard operating procedure. If you go 5 into a dealership, most of the time you will go 6 in and fire people. I mean that's -- if you 7 have to do things quickly, you either change the 8 culture or you bring in people who know your 9 culture already and what you want to do. It's 10 unfortunately commonplace in our industry.</p> <p>11 Q. You had discussions with Silverio about 12 the concept of having the ability to hire and 13 fire people as you saw fit, correct?</p> <p>14 A. No. Cast iron assurance that I could.</p> <p>15 Q. That you could.</p> <p>16 But you also had a discussion with 17 him about the issue of Regina Dunn in 18 particular, correct?</p> <p>19 A. Before?</p> <p>20 Q. Before you were offered the job?</p> <p>21 A. Oh, yes, from the perspective of, yes, 22 what's going to happen.</p> <p>23 Q. And he's saying work it out?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 106</p>	<p>1 that Regina Dunn had made a complaint of sex 2 discrimination?</p> <p>3 A. I don't remember his name. The young 4 man drives a Lotus.</p> <p>5 Q. Dru Marks?</p> <p>6 A. No.</p> <p>7 Q. What was his position?</p> <p>8 A. He was a salesperson.</p> <p>9 Q. What did he say to you?</p> <p>10 A. That he had heard that Regina had filed 11 a sexual harassment suit against the company.</p> <p>12 Q. When you heard of this, was Regina still 13 employed?</p> <p>14 A. No.</p> <p>15 Q. Is it your testimony that you did not 16 know that Regina had made a complaint before you 17 fired her?</p> <p>18 A. That's not my testimony. My testimony 19 is that I didn't know it was a sexual 20 harassment. It was presented to me that it was 21 a harassment suit because she was a woman.</p> <p>22 Q. Who presented that to you?</p> <p>23 A. Mr. Silverio.</p> <p>24 Q. So when did you first learn that</p> <p style="text-align: right;">Page 108</p>

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<p>1 Miss Dunn had made a harassment complaint 2 because she's a woman? 3 A. Probably about a week into the job. 4 Q. Who did you hear that from? 5 A. Mr. Silverio. There were too many 6 rumors going around and he confronted me and he 7 told me. 8 Q. But before you confronted him you heard 9 rumors? 10 A. Yes. 11 Q. When did you first hear rumors? 12 A. Day 1. 13 Q. Who did you hear the rumors from? 14 A. Salespeople. 15 Q. What were they saying? 16 A. Oh, I think in an effort to protect 17 themselves, and most salespeople tend to think 18 it's a good idea to distance themselves from the 19 previous regime so they're not associated with 20 it so they don't get fired. So even if the 21 previous regime was the world's best sales team, 22 they'll still say they are awful, they're 23 terrible, because they are not there for a 24 reason. So in conversations in my first day I</p> <p style="text-align: right;">Page 109</p>	<p>1 and, "You can't do that. This is the reason 2 why." That's when he presented to me that she 3 was suing him for discrimination because she's a 4 woman. Mentioned nothing about a sexual 5 harassment suit and all. 6 Q. What was your response? 7 A. I'm usually a very calm person, but I 8 was not calm and I ripped into him. 9 Q. What did you do? What did you say? 10 A. "You lied to me. Plain and simple, you 11 lied to me. What else have you lied to me 12 about? You lied to me. You put me in a 13 position that, now what am I supposed to do?" 14 Q. What did he say? 15 A. "You're a big boy. You'll figure a way 16 out." "Out of what?" "Make it work. She's 17 good, make it work." 18 Q. Anything else? 19 A. No. 20 Q. Am I correct that as of that 21 conversation you had not decided to fire 22 Miss Dunn? 23 A. Correct. 24 Q. Did you decide to fire Miss Dunn at some</p> <p style="text-align: right;">Page 111</p>
<p>1 sat with every single salesperson, and from that 2 day some of them said things along the lines of, 3 "Well, Regina's next, when are you going to fire 4 her?" I said, "I'm not." 5 Well, even though it was that kind 6 of thing, even though she's suing the company, 7 and it was kind of like, okay, maybe that's a 8 rumor, maybe it's true. I don't know. I just 9 went about my business. I went to the 10 dealership and when the rumors didn't stop I 11 confronted Steve. 12 Q. So within a week you confronted 13 Silverio? 14 A. Uh-huh. 15 Q. Yes? 16 A. Yes. I'm sorry. 17 Q. Where was that? 18 A. On the showroom floor. 19 Q. What did you say to him? 20 A. I actually said, "I'm going to fire 21 Regina today." That's how I started the 22 conversation. Which wasn't true, but I just 23 needed to shake him a little bit. So he said, 24 "Let's go back." He took me back to the office</p> <p style="text-align: right;">Page 110</p>	<p>1 point in time? 2 A. Yes. 3 Q. When did you first decide to fire 4 Miss Dunn? 5 A. The day that she -- when I considered 6 she put the dealership in huge danger and lied 7 to me about a car. 8 Q. How long after this conversation with 9 Silverio was it? 10 A. Three, four days. 11 Q. Describe the situation that you just 12 referenced? 13 A. The gentleman who was exporting cars, 14 Andrew Mogilyanaky, had traded in a car from a 15 dealership that he had some kind of association 16 with. One of the first things I do is I send 17 someone out to check it. Bring me back a report 18 on every single car, I want to know what every 19 car is, who owns it, if that car's been there 20 three weeks and it should have gone out, I want 21 to know everything. 22 So there was a car that was a 23 trade. The whole deal just didn't make sense. 24 So I asked Regina to explain it to me.</p> <p style="text-align: right;">Page 112</p>

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<p>1 And it was a trade, but it wasn't a</p> <p>2 trade. We just did a paperwork trade and we did</p> <p>3 it so we could get a rebate on a car so this</p> <p>4 gentleman could buy the car. He's driving this</p> <p>5 car. And I checked that car and that car was</p> <p>6 still on that floor plan so we hadn't sold him</p> <p>7 that car. Something was just bad.</p> <p>8 So I asked Regina to tell me</p> <p>9 everything, and she pretty much denied knowing</p> <p>10 anything about it. "Speak to Steve Silverio,</p> <p>11 speak to Steve Silverio."</p> <p>12 I then followed the paper trail. I</p> <p>13 went up to my office, and I told the office</p> <p>14 manager, Michelle Tyler, to keep an eye on this</p> <p>15 car. Don't do anything with it, but if anybody</p> <p>16 brings up any paperwork about this car, then you</p> <p>17 need to let me know immediately, the next day.</p> <p>18 She said to me, Regina is asking us</p> <p>19 to send the title of this car back or to issue a</p> <p>20 check for the car, because no money changed</p> <p>21 hands to Haverstraw Mitsubishi.</p> <p>22 I still wasn't sure what was going</p> <p>23 on. All I knew now was that Regina had lied to</p> <p>24 me, she did know about the car because she's the</p> <p style="text-align: right;">Page 113</p>	<p>1 two with Michelle Tyler indicate to you that she</p> <p>2 hadn't told you everything?</p> <p>3 A. Because she bypassed me as the general</p> <p>4 manager of the store. Everything goes through</p> <p>5 me. I told her that as well. Everything goes</p> <p>6 through me. And she bypassed that, she</p> <p>7 deliberately did not do that and instead went to</p> <p>8 the office and said -</p> <p>9 Q. Did Silverio know what she was doing?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you ask Silverio?</p> <p>12 A. I did.</p> <p>13 Q. What did he say?</p> <p>14 A. "Yes, it's a problem, it's a problem."</p> <p>15 Q. What's a problem?</p> <p>16 A. That she had bypassed me.</p> <p>17 Q. Did you tell her then, don't bypass me</p> <p>18 in the future?</p> <p>19 A. Yes.</p> <p>20 Q. So the problem you had was she bypassed</p> <p>21 you; correct?</p> <p>22 A. Correct.</p> <p>23 Q. What did she say when you said, "Don't</p> <p>24 bypass me in the future?"</p> <p style="text-align: right;">Page 115</p>
<p>1 one who put in the request and she never - she</p> <p>2 didn't go through me and ask me to do it or tell</p> <p>3 me what was happening. She didn't tell me.</p> <p>4 Q. She didn't tell you what?</p> <p>5 A. That she was putting through this</p> <p>6 request for the title.</p> <p>7 Q. After you met with her?</p> <p>8 A. After I met with her and said "What's</p> <p>9 the story with this car?"</p> <p>10 Q. Right.</p> <p>11 A. "I don't know anything about it."</p> <p>12 Q. But then after you met with her, she</p> <p>13 then took action?</p> <p>14 A. Yes.</p> <p>15 Q. And had you instructed her not to take</p> <p>16 action?</p> <p>17 A. No.</p> <p>18 Q. So what was wrong with her taking</p> <p>19 action?</p> <p>20 A. I told her, "Tell me everything, tell me</p> <p>21 everything," was my opening statement to pretty</p> <p>22 much everyone there. "What are we facing here?</p> <p>23 Tell me everything."</p> <p>24 Q. How did her action the following day or</p> <p style="text-align: right;">Page 114</p>	<p>1 A. "Okay."</p> <p>2 Q. Is there anything else about this issue?</p> <p>3 A. Yes. Then I started to delve into the</p> <p>4 deal and I found out that this car had been used</p> <p>5 as a paper trail. We had represented, the</p> <p>6 dealership had represented to Mercedes-Benz USA</p> <p>7 that they had in fact taken a car in on trade,</p> <p>8 which then allowed a certain amount of money</p> <p>9 against that car, but the trade was just on</p> <p>10 paper and never actually happened.</p> <p>11 Q. This was done with the knowledge of</p> <p>12 Mr. Silverio, wasn't it?</p> <p>13 MS. WALKER: Objection to the form.</p> <p>14 THE WITNESS: I have always been</p> <p>15 told by Mr. Silverio he had no knowledge of it;</p> <p>16 because once it unraveled and I told him this is</p> <p>17 what I found and this is what happened, he took</p> <p>18 the stance of, yeah, I didn't know anything</p> <p>19 about it.</p> <p>20 BY MR. CONSOLE:</p> <p>21 Q. Did you ever ask Miss Dunn as to whether</p> <p>22 or not she was advised to do this by either</p> <p>23 Mr. Esposito, Mr. Silverio, or anyone else?</p> <p>24 A. When I asked her about why she sent the</p> <p style="text-align: right;">Page 116</p>

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<p>1 paperwork to the office, she refused to answer</p> <p>2 me. She answered me, but she refused to answer</p> <p>3 the question. It was just dancing.</p> <p>4 Q. What did she say?</p> <p>5 A. I don't know. I don't remember. I</p> <p>6 don't know what you're talking about. But her</p> <p>7 signature was on the paperwork so she sent it</p> <p>8 through.</p> <p>9 Q. But the issue in question as far as this</p> <p>10 car, you say that you think there was something</p> <p>11 inappropriate done in connection with this</p> <p>12 vehicle; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that something inappropriate was</p> <p>15 done before you were hired; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that something that was</p> <p>18 inappropriate that was done, was that done</p> <p>19 because Mr. Silverio authorized it?</p> <p>20 MS. WALKER: Objection to the form.</p> <p>21 BY MR. CONSOLE:</p> <p>22 Q. Do you know?</p> <p>23 A. I do not know.</p> <p>24 Q. Was it done because Mr. Esposito</p> <p style="text-align: right;">Page 117</p>	<p>1 Q. And who was responsible for the trade-in</p> <p>2 initially of this car, of all those people</p> <p>3 you've mentioned, who was responsible?</p> <p>4 A. I would imagine that would be the</p> <p>5 salesperson, if there was a salesperson attached</p> <p>6 to it, or it would have been Regina or Joe.</p> <p>7 Q. Could it have been Brian?</p> <p>8 A. Yes. I wasn't there.</p> <p>9 Q. Could it have been Dru Marks?</p> <p>10 A. It could have been anyone.</p> <p>11 Q. Did you ever determine who was actually</p> <p>12 responsible for this trade-in you didn't think</p> <p>13 was appropriate?</p> <p>14 A. Yes.</p> <p>15 Q. And who did you determine?</p> <p>16 A. Regina.</p> <p>17 Q. How did you determine that?</p> <p>18 A. Andrew Mogilyansky.</p> <p>19 Q. Andrew Mogilyansky told you?</p> <p>20 A. Uh-huh.</p> <p>21 Q. When did he tell you that?</p> <p>22 MR. TINARI: Is that a yes?</p> <p>23 THE WITNESS: That's a yes.</p> <p>24 Probably within the next week.</p> <p style="text-align: right;">Page 119</p>
<p>1 authorized it?</p> <p>2 A. I do not know.</p> <p>3 Q. It was a trade-in; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And who was in charge of the trade-ins</p> <p>6 at Mercedes-Benz Fort Washington as of that</p> <p>7 point in time?</p> <p>8 A. Okay. Who's in charge of appraising a</p> <p>9 trade would have been Brian, which means if the</p> <p>10 salesperson wants a number put on a trade, what</p> <p>11 is this car worth, and Brian would have been the</p> <p>12 person or Dru Marks, if he was there. I'm sure</p> <p>13 Joe Esposito and Regina both had the authority</p> <p>14 to look at the trade and put a number on it.</p> <p>15 When it comes to taking the</p> <p>16 particulars on the trade and committing it to</p> <p>17 paper, that would be every single salesperson,</p> <p>18 along with the managers, Regina and Joe,</p> <p>19 whoever, or Tom Palmer, or whoever they give</p> <p>20 power to that says, "Yes, I have checked this</p> <p>21 deal, yes, this is all correct, here's my</p> <p>22 signature."</p> <p>23 Q. And what car was this?</p> <p>24 A. I don't remember.</p> <p style="text-align: right;">Page 118</p>	<p>1 BY MR. CONSOLE:</p> <p>2 Q. Didn't Mogilyansky also tell you that</p> <p>3 Silverio knew everything that was going on?</p> <p>4 MS. WALKER: Objection to the form.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. CONSOLE:</p> <p>7 Q. He didn't tell you that?</p> <p>8 MS. WALKER: Objection to the form.</p> <p>9 MR. TINARI: Objection.</p> <p>10 MS. WALKER: Argumentative.</p> <p>11 MR. CONSOLE: It is not</p> <p>12 argumentative. There's nothing wrong with the</p> <p>13 form.</p> <p>14 THE WITNESS: No, he never, to me.</p> <p>15 He always claimed that he had no knowledge.</p> <p>16 BY MR. CONSOLE:</p> <p>17 Q. Who is the "he" here?</p> <p>18 A. The "he," being Steve Silverio.</p> <p>19 Q. Silverio?</p> <p>20 A. Correct.</p> <p>21 Q. Did you ever ask Mogilyansky if Silverio</p> <p>22 had knowledge of this transaction?</p> <p>23 A. I didn't need to. He told me he did.</p> <p>24 Q. Who told you he did?</p> <p style="text-align: right;">Page 120</p>

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<p>1 A. Mr. Mogilyansky told me Steve Silverio 2 knew what was going on. 3 Q. Did you ever ask Miss Dunn if Silverio 4 knew what was going on? 5 A. I don't think so. 6 Q. Why not? 7 A. Because my conversations with 8 Mr. Mogilyansky happened after I found out about 9 the car, and I had already made up my mind that 10 if you lied to me, I don't want you working for me. 11 Q. And what is the lie? 12 A. The lie was that she didn't know 13 anything about the car that Mr. Mogilyansky fake 14 traded to get money out of Mercedes-Benz. 15 Q. And Silverio also told you he didn't 16 know anything about the car? 17 A. Correct. 18 Q. He lied to you also? 19 MR. TINARI: Objection. 20 MR. DENGLER: Objection. 21 BY MR. CONSOLE: 22 Q. According to Mogilyansky he knew, right? 23 MS. WALKER: Objection to form. 24 MR. DENGLER: Objection.</p> <p style="text-align: right;">Page 121</p>	<p>1 was my opinion after talking to her, asking her 2 questions, watching her work. It was my opinion 3 that she didn't want to be there any more. 4 Q. She was demoralized? 5 MS. WALKER: Objection to the form. 6 MR. DENGLER: Objection to the 7 form. 8 THE WITNESS: I don't think I know 9 her well enough to know whether she was 10 demoralized. She was unhappy. 11 BY MR. CONSOLE: 12 Q. Any other reason as to why you concluded 13 to fire her other than you concluded that she 14 lied and you concluded that she didn't want to 15 be there any more? 16 A. No. 17 Q. You already testified to the 18 conversation where you told Mr. Silverio but you 19 weren't telling the truth that you wanted to 20 fire Miss Dunn. 21 A. Uh-huh. 22 Q. Did you then have another conversation 23 with Mr. Silverio where you told him that you 24 wanted to fire her?</p> <p style="text-align: right;">Page 123</p>
<p>1 MR. TINARI: Objection. 2 THE WITNESS: Mr. Mogilyansky did 3 say Silverio knew what was going on. As a 4 blanket statement I didn't ask him if he knew. 5 Mr. Mogilyansky's blanket statement was that 6 Steve Silverio knew what was going on with the 7 dealership with the exports. 8 BY MR. CONSOLE: 9 Q. In connection with this vehicle, was 10 there any financial penalty paid by 11 Mercedes-Benz Fort Washington? 12 A. There could have been. 13 Q. Was there? 14 A. Not until the point -- actually, that's 15 not true. You know, I have never checked it. 16 There were massive chargebacks, massive. Almost 17 a million dollars, I think. It may have been 18 one of the cars on there. I don't know. 19 Q. In connection with your decision to fire 20 Miss Dunn, was that the only reason why, that 21 is, you concluded that she had lied to you? 22 A. No. 23 Q. What other reasons were there? 24 A. Regina didn't want to be there any more,</p> <p style="text-align: right;">Page 122</p>	<p>1 A. Yes. 2 Q. When was the next conversation that you 3 had along those lines? 4 A. I would say about a week later, because 5 I had two conversations with Mr. Mogilyansky at 6 that point. And in that week to ten-day period, 7 that's when it was quite obvious to me that 8 Regina didn't want to be there, so at that point 9 in time, I made Mr. Silverio live up to his 10 words to me I have control, I have control. I 11 have a pay plan that's based on what I produce. 12 I have control. This is my decision, I want to 13 make this happen. How do I do it? 14 Q. What did he say? 15 A. That's when he told me that it would be 16 bad for him if she filed suit, it would look 17 bad. They had enough problems. Basically try 18 to guilt me, plead me into not doing it. So I 19 said to him, "You take over the dealership. I'm 20 done." 21 MR. TINARI: I'm sorry? 22 THE WITNESS: "You take over the 23 dealership. I'm done. You tied my hands behind 24 my back. I can't make money. I can't make</p> <p style="text-align: right;">Page 124</p>

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<p>1 progress."</p> <p>2 And he said, "Okay, I'll speak to</p> <p>3 Vince and Carlos about it."</p> <p>4 BY MR. CONSOLE:</p> <p>5 Q. Did you tell him why you wanted to fire</p> <p>6 her?</p> <p>7 A. Probably.</p> <p>8 Q. Do you recall that or are you just</p> <p>9 guessing it?</p> <p>10 A. Yeah.</p> <p>11 Q. What did you tell him?</p> <p>12 A. About the car and the fact that she</p> <p>13 spends three hours a day walking around the</p> <p>14 dealership outside on the phone. I questioned</p> <p>15 her about it, and she said she was talking to</p> <p>16 her nanny. It would end soon. She was sorry.</p> <p>17 She had just moved. Something to do with a</p> <p>18 nanny, getting a good nanny. Which I would have</p> <p>19 worked with. You can tell when someone doesn't</p> <p>20 want to be somewhere.</p> <p>21 Q. You knew there were rumors about her</p> <p>22 throughout the dealership, correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Yes?</p> <p style="text-align: right;">Page 125</p>	<p>1 right?</p> <p>2 A. It is hard to quantify. From her</p> <p>3 position she's lost a general manager that she</p> <p>4 came to work for. I am in a new job. I have 27</p> <p>5 other things to do. So does she. I can't</p> <p>6 honestly say I was tuned into looking at her</p> <p>7 morale. My thought process is if I'm her, I'm</p> <p>8 doing everything I can to impress this general</p> <p>9 manager because I want to keep this job.</p> <p>10 Q. Did anyone tell you that she had sent a</p> <p>11 written letter to Carlos Hoz de Vila on</p> <p>12 August 5th complaining of discrimination?</p> <p>13 A. After the last conversation with Steve</p> <p>14 that I'm going to do this, make it happen, and</p> <p>15 he said he would talk to Carlos and Steve, Vince</p> <p>16 told me that in a meeting probably a day, two</p> <p>17 days later.</p> <p>18 Q. Is that the next contact you had with</p> <p>19 anyone about terminating Miss Dunn?</p> <p>20 A. Yes.</p> <p>21 Q. Who is in that meeting?</p> <p>22 A. Vince, Carlos and Steve.</p> <p>23 Q. What is said in that meeting?</p> <p>24 A. I think it started out because it's a</p> <p style="text-align: right;">Page 127</p>
<p>1 A. Yes.</p> <p>2 Q. Did you understand that if she heard of</p> <p>3 these rumors it would be upsetting to her?</p> <p>4 MS. WALKER: Objection to the form.</p> <p>5 MR. TINARI: Objection.</p> <p>6 THE WITNESS: Shame on me I didn't</p> <p>7 think about it.</p> <p>8 BY MR. CONSOLE:</p> <p>9 Q. Do you agree with me as general manager</p> <p>10 that if you have a female general sales manager</p> <p>11 and the people on the floor are talking about</p> <p>12 her bringing a complaint against the company,</p> <p>13 that could demoralize that woman?</p> <p>14 MS. WALKER: Objection to the form.</p> <p>15 MR. TINARI: Objection.</p> <p>16 THE WITNESS: Yes, it could.</p> <p>17 BY MR. CONSOLE:</p> <p>18 Q. Did you speak to Miss Dunn about the</p> <p>19 issue of her morale?</p> <p>20 A. No. My observations on morale was after</p> <p>21 I found out about the car, so my decision was</p> <p>22 already made.</p> <p>23 Q. So for the first couple of weeks you</p> <p>24 didn't have a problem with her morale; is that</p> <p style="text-align: right;">Page 126</p>	<p>1 statement meeting, which means basically we have</p> <p>2 gone over the statements, the Blue Book, to look</p> <p>3 at what we have done against projections. It's</p> <p>4 the end of the year, so new projections need to</p> <p>5 be made for next year and they're asking me for</p> <p>6 my input.</p> <p>7 And my basic response was, "Okay,</p> <p>8 with Regina or without Regina?" That's how I</p> <p>9 broached the subject and I told him --</p> <p>10 Q. What did you tell him?</p> <p>11 A. It's not working. It's not working. I</p> <p>12 can't move this dealership forward unless I</p> <p>13 bring in the people I need to bring in. That's</p> <p>14 my decision. That's what we want to do. How do</p> <p>15 we accomplish that?</p> <p>16 Q. What did they say?</p> <p>17 A. They all looked at each other, and Vince</p> <p>18 said, "You are aware of the situation we have</p> <p>19 with Regina?" And I said, "No. I hear a lot,</p> <p>20 but no one's actually told me anything, so tell</p> <p>21 me." And that's when he told me.</p> <p>22 Q. What did he tell you?</p> <p>23 A. That she filed suit against the company,</p> <p>24 against Steve, that someone had come in. There</p> <p style="text-align: right;">Page 128</p>

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<p>1 was mediation, questions. I don't even think 2 then a sexual harassment. I certainly think I 3 would have remembered that. I don't even think 4 then that they told me she had filed a sexual 5 harassment suit. It was just a lawsuit about 6 discrimination because she's a woman. 7 Q. What else was said in this meeting? 8 A. They looked at each other and I think 9 Carlos said, "Well, if that's what he wants to 10 do, he has the right to do it. So Vince, speak 11 to an attorney, get Paul involved and walk him 12 through the process of what he has to do." 13 Q. In that meeting, did you tell him why 14 you wanted to fire Miss Dunn? 15 A. Yes. 16 Q. What did you tell him? 17 A. That I can't trust her and she doesn't 18 want to be here and that's not going to change. 19 Q. Did anybody in that meeting discuss with 20 you the fact that Miss Dunn had in her written 21 complaint referenced, among other things, that 22 males in the showroom were calling her a cunt 23 and a bitch? 24 A. No, I don't think I even found out about</p> <p style="text-align: right;">Page 129</p>	<p>1 Q. Who were the people you were going to 2 bring in? 3 A. David Reedman. 4 Q. Who else? 5 A. Tony Lukanaki. Rich Gambone, but it 6 actually turned out that he actually started the 7 same day as I did, service manager. 8 Casey Taylor, who never ended up 9 taking the job there. And Ray Costa, who did. 10 Q. As of this conversation you had with 11 Petruzzello and Hoz de Vila and Silverio, had 12 you reached back and spoken to Reedman about 13 coming on board as a GSM? 14 A. Yes. In fact, he was going through his 15 own issues. He pretty much called me every two 16 or three days since the first time I said I may 17 have - would be interested. 18 Q. When was Reedman offered the job? 19 A. Probably after my first week there, 20 after the incident about the car. 21 Q. Was Reedman offered the job before you 22 got authorized to fire Dunn? 23 A. Yes. 24 Q. So you offered him the job?</p> <p style="text-align: right;">Page 131</p>
<p>1 that letter. I don't think I ever read 2 anything. I'm not even sure if I read it, but 3 at the - when I went to mediation in Media. 4 Q. Did anybody ever tell you that 5 Mr. Silverio, when he found out that she had 6 made the written complaint, told Mr. Esposito to 7 put a choke hold on that dumb bitch? 8 MR. DENGLER: Objection to the 9 form. 10 MS. WALKER: Objection to the form. 11 MR. CONSOLE: You can object all 12 you want. You know it's the testimony. 13 Everybody in this room knows it's the testimony. 14 BY MR. CONSOLE: 15 Q. Did anybody tell you about it? 16 A. No. 17 Q. Did anybody tell you that Miss Dunn felt 18 that she was being undermined in her position as 19 general sales manager because she's a woman? 20 A. No. 21 Q. You said you told these people you were 22 going to bring your people in, that's what you 23 said. 24 A. Uh-huh.</p> <p style="text-align: right;">Page 130</p>	<p>1 A. Yes. 2 Q. Did he accept? 3 A. Pursuant to us coming to terms on a pay 4 plan. 5 Q. When was this in relation to your start 6 date? 7 A. I'd say about ten days, a week to ten 8 days after. 9 Q. Did you tell Silverio that you had 10 offered the job to Reedman? 11 A. No. 12 Q. Why not? 13 A. I am pretty pissed at this time. 14 Q. Pretty pissed at who? 15 A. Mr. Silverio. 16 Q. Why? 17 A. Shouldn't have to ask. I shouldn't have 18 to ask to fire someone. I shouldn't have to ask 19 to do anything. It's not the way I work and I 20 was very clear when I started. 21 MS. WALKER: Can we take a comfort 22 break? 23 MR. CONSOLE: Sure. 24 MS. WALKER: Thank you.</p> <p style="text-align: right;">Page 132</p>

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<p>1 (Recess.)</p> <p>2 BY MR. CONSOLE:</p> <p>3 Q. I think we left off with the meeting</p> <p>4 that you had with Petruzzello, Hoz de Vila and</p> <p>5 Silverio. Where was that meeting held?</p> <p>6 A. Conference room, Mercedes-Benz of Fort</p> <p>7 Washington.</p> <p>8 Q. When you said that you didn't think</p> <p>9 Regina wanted to be at the dealership, did they</p> <p>10 respond in any way to that?</p> <p>11 A. I don't think so.</p> <p>12 Q. Do you agree that if Regina, in the</p> <p>13 first 30 days of your employment at</p> <p>14 Mercedes-Benz of Fort Washington, if she had</p> <p>15 conveyed to you that she was enthusiastic and</p> <p>16 really wanted to be at the dealership, that you</p> <p>17 would have not decided to terminate her?</p> <p>18 MS. WALKER: Objection to the form.</p> <p>19 THE WITNESS: I'm sorry, if she had</p> <p>20 performed and was energetic, I would not have</p> <p>21 fired her?</p> <p>22 BY MR. CONSOLE:</p> <p>23 Q. I'm focusing in on the issue of her</p> <p>24 morale or her attitude, and my question is, if</p> <p style="text-align: right;">Page 133</p>	<p>1 being said in that meeting with Hoz de Vila,</p> <p>2 Silverio and Petruzzello?</p> <p>3 A. I think so.</p> <p>4 Q. What's the next communication you had</p> <p>5 with anyone about the issue of terminating</p> <p>6 Regina Dunn?</p> <p>7 A. Either that day or the following day,</p> <p>8 Vince called me to his office. He had an</p> <p>9 attorney on the other end of the line. He made</p> <p>10 me repeat what I told them and my reasons for</p> <p>11 doing it. And then said okay, then do it, but</p> <p>12 either Carlos or Vince needed to be in the</p> <p>13 meeting and Steve Silverio was not to be in the</p> <p>14 building.</p> <p>15 Q. What did you tell the attorney? Is that</p> <p>16 James Kilcur, by the way?</p> <p>17 A. It sounds familiar.</p> <p>18 Q. Whoever the attorney was, what did you</p> <p>19 tell him in that phone call?</p> <p>20 A. Pretty much what I've told you, that --</p> <p>21 I don't think I went into the details. I think</p> <p>22 I just mentioned from a business practice point</p> <p>23 of view I had seen things done that I wouldn't</p> <p>24 stand for and I'm dealing with a person who</p> <p style="text-align: right;">Page 135</p>
<p>1 she had within those first few weeks of your</p> <p>2 employment shown an enthusiastic, vibrant, happy</p> <p>3 approach to the job, do you agree that you would</p> <p>4 not have recommended her termination at that</p> <p>5 time?</p> <p>6 MS. WALKER: Objection to the form.</p> <p>7 THE WITNESS: If she had been</p> <p>8 honest with me about the car in conjunction with</p> <p>9 that, yes.</p> <p>10 BY MR. CONSOLE:</p> <p>11 Q. Are you saying regardless of her</p> <p>12 attitude she wouldn't have been fired just</p> <p>13 solely on the car issue?</p> <p>14 A. No.</p> <p>15 Q. So you agree with me that if she had a</p> <p>16 better attitude in those first few weeks you</p> <p>17 would not have recommended at that time that she</p> <p>18 be terminated?</p> <p>19 MR. TINARI: Objection.</p> <p>20 MS. WALKER: Objection to the form.</p> <p>21 MR. DENGLE: Same objection.</p> <p>22 THE WITNESS: Correct.</p> <p>23 BY MR. CONSOLE:</p> <p>24 Q. Have you told me everything you recall</p> <p style="text-align: right;">Page 134</p>	<p>1 doesn't want to be here. I then voiced again my</p> <p>2 objection to having to go through any of this.</p> <p>3 I don't think I was specific about the car, and</p> <p>4 he said okay.</p> <p>5 Q. Did he ask you whether or not you were</p> <p>6 aware of the fact that Miss Dunn had made a</p> <p>7 complaint about discrimination in the workplace?</p> <p>8 MR. DENGLE: Objection to the</p> <p>9 form.</p> <p>10 THE WITNESS: His actual phrasing</p> <p>11 of it was somewhere along the lines of, "You are</p> <p>12 aware of the fact that," and my response was,</p> <p>13 "I'm aware of what Vince has told me, Vince and</p> <p>14 Steve have told me," and Vince followed it up by</p> <p>15 saying he's aware.</p> <p>16 BY MR. CONSOLE:</p> <p>17 Q. Just so the record is clear, when Kilcur</p> <p>18 says "you're aware of the fact that," do you</p> <p>19 then finish the sentence?</p> <p>20 A. That she has a complaint, an official</p> <p>21 complaint against them.</p> <p>22 Q. And you indicated you were aware of</p> <p>23 that?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 136</p>

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<p>1 A. No.</p> <p>2 Q. As part of the process of terminating an</p> <p>3 employee, was a termination report to be filled</p> <p>4 out?</p> <p>5 A. Handled by HR, yes.</p> <p>6 Q. Turn to Exhibit P-39, please.</p> <p>7 Exhibit P-39 is a one-page</p> <p>8 termination report for Regina Dunn dated</p> <p>9 November 3rd, 2008. Have I identified that</p> <p>10 correctly?</p> <p>11 A. You have.</p> <p>12 Q. Does your signature appear at the bottom</p> <p>13 of the page?</p> <p>14 A. My handwriting too.</p> <p>15 Q. I'm sorry, and your handwriting too?</p> <p>16 A. Correct.</p> <p>17 Q. So next to the signature there's a date</p> <p>18 of 11-3-08; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. And are you the one who did the check</p> <p>21 marks here?</p> <p>22 A. I would say yes, except for the bottom.</p> <p>23 Q. Except for the bottom where it says "for</p> <p>24 office use only"?</p> <p style="text-align: right;">Page 141</p>	<p>1 Q. Does this refresh your recollection that</p> <p>2 when you filled out the termination report you</p> <p>3 backdated it?</p> <p>4 A. I would say yes, but it doesn't refresh</p> <p>5 my recollection, but I would say that's probably</p> <p>6 what happened.</p> <p>7 Q. Do you agree that that's dishonest?</p> <p>8 MS. WALKER: Objection to the form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. CONSOLE:</p> <p>11 Q. It's not? It's not dishonest to put the</p> <p>12 wrong date on a document that you sign?</p> <p>13 MS. WALKER: Objection to the form.</p> <p>14 MR. DENGLE: Same objection.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. CONSOLE:</p> <p>17 Q. Why the no?</p> <p>18 A. It's paperwork.</p> <p>19 Q. So you can lie on paperwork?</p> <p>20 MS. WALKER: Objection to the form.</p> <p>21 BY MR. CONSOLE:</p> <p>22 Q. You can put false dates on paperwork,</p> <p>23 that's okay with you?</p> <p>24 A. The answer's not going to change.</p> <p style="text-align: right;">Page 143</p>
<p>1 A. Correct.</p> <p>2 Q. Did you fill this document out and sign</p> <p>3 it on November 3rd, 2008?</p> <p>4 A. I would say yes.</p> <p>5 Q. You wouldn't put a false date there,</p> <p>6 would you?</p> <p>7 A. No.</p> <p>8 Q. Can you turn to Exhibit P-40, please.</p> <p>9 Exhibit P-40 appears to be an e-mail chain from</p> <p>10 November 5th, 2008. It has first an e-mail from</p> <p>11 Marion Maurer to Joann George referencing</p> <p>12 Regina, November 8th at three o'clock, 3:08 p.m.</p> <p>13 Then an e-mail from Joann George to Marilyn</p> <p>14 Maurer and you, is November 5th, 2008, at 3:11</p> <p>15 p.m.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Does this e-mail indicate that as of the</p> <p>19 time you received the e-mail you had not yet</p> <p>20 signed the termination report?</p> <p>21 MS. WALKER: Objection to the form.</p> <p>22 BY MR. CONSOLE:</p> <p>23 Q. You can answer.</p> <p>24 A. I would say yes.</p> <p style="text-align: right;">Page 142</p>	<p>1 MS. WALKER: Objection to form.</p> <p>2 THE WITNESS: I don't think it's</p> <p>3 dishonest. I think it's just paperwork. I'm</p> <p>4 filling it out, I'm lining everything up.</p> <p>5 BY MR. CONSOLE:</p> <p>6 Q. But you're putting the wrong date down</p> <p>7 next to your signature; right?</p> <p>8 MS. WALKER: Objection to the form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. CONSOLE:</p> <p>11 Q. In terms of the employee evaluation, did</p> <p>12 you put in those check marks?</p> <p>13 A. Yes.</p> <p>14 Q. Are they also false?</p> <p>15 A. Yes.</p> <p>16 Q. So the only thing that's false on this</p> <p>17 document is the date you signed?</p> <p>18 MS. WALKER: Objection to the form.</p> <p>19 BY MR. CONSOLE:</p> <p>20 Q. Is that your testimony?</p> <p>21 A. Correct.</p> <p>22 Q. Now, you say that Miss Dunn here,</p> <p>23 looking at these employee evaluation boxes,</p> <p>24 management skills, you put "unsatisfactory."</p> <p style="text-align: right;">Page 144</p>

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<p>1 with him before.</p> <p>2 Q. No one other than Miss Dunn?</p> <p>3 A. Correct.</p> <p>4 Q. Did he tell you that he thought her</p> <p>5 accusation was baseless?</p> <p>6 A. Yes.</p> <p>7 Q. Did he tell you he was upset about it?</p> <p>8 A. Yes.</p> <p>9 Q. What did he say?</p> <p>10 A. That he's a good guy. That he doesn't</p> <p>11 deserve it.</p> <p>12 Q. That he doesn't deserve these</p> <p>13 accusations made against him?</p> <p>14 A. They're not true.</p> <p>15 Q. So he was telling you she was lying?</p> <p>16 MS. WALKER: Objection to the form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. CONSOLE:</p> <p>19 Q. Did he actually say that, did he say</p> <p>20 she's lying?</p> <p>21 A. I think he probably did.</p> <p>22 Q. Did you believe him?</p> <p>23 A. At that point when I was having these</p> <p>24 conversations, fifty-fifty.</p> <p style="text-align: right;">Page 157</p>	<p>1 BY MR. CONSOLE:</p> <p>2 Q. To some extent?</p> <p>3 MS. WALKER: Objection to the form.</p> <p>4 THE WITNESS: I didn't know the</p> <p>5 people I was working for. I didn't know the</p> <p>6 people who were working for me. I try very hard</p> <p>7 to be my own man and make my own decisions, and</p> <p>8 I think I was successful in approaching it this</p> <p>9 way.</p> <p>10 BY MR. CONSOLE:</p> <p>11 Q. Do you agree with me that those comments</p> <p>12 by Silverio to some extent made you cautious</p> <p>13 about Miss Dunn?</p> <p>14 MS. WALKER: Objection to the form.</p> <p>15 THE WITNESS: Anything's possible.</p> <p>16 I don't think so.</p> <p>17 BY MR. CONSOLE:</p> <p>18 Q. But maybe?</p> <p>19 A. Maybe.</p> <p>20 Q. Have you ever been accused of sexual</p> <p>21 harassment?</p> <p>22 A. No.</p> <p>23 Q. Has anybody ever brought a claim of</p> <p>24 discrimination that involved you as the</p> <p style="text-align: right;">Page 159</p>
<p>1 Q. Would you agree with me that it</p> <p>2 certainly had an impact on your perception of</p> <p>3 Miss Dunn?</p> <p>4 MS. WALKER: Objection to the form.</p> <p>5 THE WITNESS: No, we're talking</p> <p>6 about conversations after she was gone, but yes.</p> <p>7 BY MR. CONSOLE:</p> <p>8 Q. Did you have conversations with</p> <p>9 Mr. Silverio about her complaints before she was</p> <p>10 fired, before Miss Dunn was fired?</p> <p>11 A. Only the ones I've spoken about. When I</p> <p>12 started to get rumors and I confronted and asked</p> <p>13 and blew up with him, those are the only</p> <p>14 conversations.</p> <p>15 Q. Did he tell you at that time that those</p> <p>16 accusations were false?</p> <p>17 A. Probably.</p> <p>18 Q. Did he tell you at that time that she</p> <p>19 was a liar?</p> <p>20 A. Probably.</p> <p>21 Q. Would you agree with me that those</p> <p>22 comments made before the decision to fire Dunn</p> <p>23 had been made influenced your view of Miss Dunn?</p> <p>24 MS. WALKER: Objection to the form.</p> <p style="text-align: right;">Page 158</p>	<p>1 supervisor?</p> <p>2 A. I think I was actually named in the</p> <p>3 Potomkin suit that I mentioned earlier, but the</p> <p>4 defense attorneys actually on my behalf, without</p> <p>5 my asking, went before the judge and asked him</p> <p>6 to remove me from the suit so that I didn't need</p> <p>7 an attorney and I wouldn't face any financial</p> <p>8 ramifications.</p> <p>9 Q. You were named as a defendant in that</p> <p>10 case?</p> <p>11 A. I think it was just maybe et al. Maybe</p> <p>12 I was on the papers.</p> <p>13 Q. Did you ever get served with papers?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Have you ever had a situation where</p> <p>16 someone you worked for complained of</p> <p>17 discrimination?</p> <p>18 MS. WALKER: Objection to the form.</p> <p>19 MR. CONSOLE: I should rephrase it.</p> <p>20 BY MR. CONSOLE:</p> <p>21 Q. Have you ever had a situation where</p> <p>22 someone who worked under you complained of</p> <p>23 discrimination?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 160</p>

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<p>1 Miss Machkas, and Miss Dunn were terminated; 2 correct? 3 A. Correct. 4 Q. Along with Brian Szasz? 5 A. Correct. 6 Q. No one else; correct? 7 MS. WALKER: Objection to the form. 8 THE WITNESS: I don't think so. 9 BY MR. CONSOLE: 10 Q. As of that date, were they the only 11 three female employees of Mercedes-Benz of Fort 12 Washington? 13 A. No. 14 Q. Who else was a female employee of 15 Mercedes-Benz of Fort Washington? 16 A. We had a service writer. We had a parts 17 expediter. Of course the people in the office 18 upstairs, who three of them are definitely 19 Mercedes-Benz of West Chester employees. 20 I'm not sure about Carlos' 21 secretary. She may have been Mercedes-Benz of 22 Fort Washington. She may have been Condor. 23 Q. Were these the only three females who 24 were on the floor of Mercedes-Benz Fort</p> <p style="text-align: right;">Page 165</p>	<p>1 actually prepare those first three pages? I 2 think you already answered that. On or about 3 November 13 of 2009; correct? 4 A. I think it said it on the 13th. But it 5 took me about three days of deciding whether I 6 should or I shouldn't getting it together and 7 sending it. 8 Q. The next two pages are called the 9 interview process. 10 A. Uh-huh. 11 Q. When did you prepare this document? 12 A. In August of 2009. 13 Q. August of 2009? 14 A. It may have been July. 15 Q. The next document is three pages, 16 "Regina Dunn and Andrew Mogilyansky" is the 17 title. 18 When did you prepare this document? 19 A. Probably around the same time as I did 20 the first one. 21 Q. So September of 2009? 22 A. Yes. 23 Q. And then the last pages of Exhibit P-46, 24 two pages under the caption, "the job threat,"</p> <p style="text-align: right;">Page 167</p>
<p>1 Washington? 2 MS. WALKER: Objection to the form. 3 THE WITNESS: Again, I'm going to 4 say I don't think so. I think Kirstie - I'm 5 not sure if she was employed, again, by Condor 6 or Mercedes-Benz of Fort Washington, but she 7 worked on the floor. She works at the BBC, the 8 incoming leads. She worked with the salespeople 9 on the floor. 10 BY MR. CONSOLE: 11 Q. But she may not have been employed by 12 Mercedes-Benz Fort Washington? 13 A. That is possible. 14 Q. So as far as Mercedes-Benz Fort 15 Washington employees, were the only three 16 females on the floor the three that were 17 terminated on November 3rd, 2008? 18 MS. WALKER: Objection to the form. 19 THE WITNESS: It's quite possible, 20 because I don't know the status of what the 21 others were paid. 22 BY MR. CONSOLE: 23 Q. The document that we marked earlier, 24 P-46, which is marked as P-46, when did you</p> <p style="text-align: right;">Page 166</p>	<p>1 when were they prepared? 2 A. Pretty much as it happened. Maybe we 3 were two days in before I started understanding 4 where this was going. I wanted to make that one 5 first. 6 Q. Let me ask you to turn to Exhibit P-44. 7 This is an application prepared for David 8 Reedman to seek a position at Mercedes-Benz of 9 West Chester; is that correct? 10 A. Correct. 11 Q. Is any of the handwriting on this 12 document yours? 13 A. No. 14 Q. The date on this document is 15 October 17th, 2008. Do you see that on the last 16 page? 17 A. I'm sorry. Okay. 18 Q. When did Reedman start? 19 A. The day Regina was fired. 20 Q. So that would be November 3rd? 21 A. If that was the day she started. 22 Q. That's the day that she was fired? 23 A. Fired, sorry, yes. 24 Q. Did you have Mr. Reedman fill out this</p> <p style="text-align: right;">Page 168</p>

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1 application?	1 A. I don't remember. I just know she
2 A. I don't remember.	2 didn't care for it.
3 Q. What was Mr. Reedman's starting	3 Q. This conversation that you had with
4 compensation?	4 Silverio, was that before the conversation you
5 A. I don't remember.	5 had with George about Reedman's drunk driving?
6 Q. Was it more or less than Miss Dunn?	6 MS. WALKER: Objection to the form.
7 A. I don't know what Regina was getting	7 THE WITNESS: I don't remember.
8 paid.	8 BY MR. CONSOLE:
9 Q. Were you getting paid more or less than	9 Q. Were those conversations that you had
10 Mr. Espoello?	10 with Silverio and George regarding Reedman's
11 MS. WALKER: Objection to the form.	11 drunk driving after you had already offered the
12 THE WITNESS: Less.	12 job to Mr. Reedman?
13 BY MR. CONSOLE:	13 A. After.
14 Q. By how much?	14 Q. Before Miss Dunn was fired, did you
15 A. I don't know.	15 review any documentation pertaining to issues of
16 Q. How do you know it was less?	16 discrimination in the workplace?
17 A. Because I was told every day.	17 A. No.
18 Q. Mr. Reedman, in his application, says to	18 Q. I'm sorry?
19 the question, "Have you ever been convicted of a	19 A. No.
20 felony?" He puts "No." Do you see that?	20 Q. At some point in time, did you have to
21 A. Which page are we talking about?	21 sign an employee acknowledgment form saying that
22 Q. The first page.	22 you read the handbook?
23 A. Okay.	23 A. Yes.
24 Q. Do you see he circles "No"?	24 Q. And did you read the handbook before you

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1 A. I do.	1 signed the form?
2 Q. Were you aware of the fact that	2 A. Probably not.
3 Mr. Reedman had pled guilty to driving under the	3 MR. CONSOLE: Let's have this
4 influence?	4 marked.
5 A. Yes.	5 (P-69 was marked for
6 Q. And had he done that on one or more than	6 identification.)
7 one occasion?	7 BY MR. CONSOLE:
8 A. Two or three times.	8 Q. I'm showing you a document marked P-69
9 Q. Did that cause you concern in regard to	9 Bates stamped 750. It appears to be an employee
10 hiring him?	10 acknowledgment form signed by you on
11 A. Yes.	11 December 11th of 2008.
12 Q. Did you tell anyone that Mr. Reedman had	12 Did I accurately identify it?
13 been on two or three occasions convicted of	13 A. You did.
14 driving under the influence?	14 Q. And is that your signature?
15 A. Yes.	15 A. It is.
16 Q. Who did you tell that to?	16 MR. CONSOLE: Let's take a break
17 A. Steve Silverio and Joann George.	17 for lunch.
18 Q. And what was the response of Silverio?	18 (Lunch recess, 1:43 p.m.)
19 A. Would I vouch for the guy.	19 (Resumed, 2:28 p.m.)
20 Q. And what did you say?	20 BY MR. CONSOLE:
21 A. Yes.	21 Q. Mr. Mackenzie, at lunch, did you discuss
22 Q. What was the response of George?	22 this case?
23 A. She didn't like it.	23 A. No.
24 Q. What did she say?	24 Q. Who did you have lunch with?

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43 (Pages 169 to 172)

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<p>1 MR. DENGLER: Objection.</p> <p>2 BY MR. CONSOLE:</p> <p>3 Q. You'd stand by and do it again?</p> <p>4 A. After finding out what I found out,</p> <p>5 absolutely.</p> <p>6 Q. And the finding out what you found out</p> <p>7 is that she didn't tell you the truth about a</p> <p>8 car?</p> <p>9 A. Correct.</p> <p>10 Q. Why didn't you document in any way the</p> <p>11 fact that you found out, or you concluded that</p> <p>12 she had not been truthful with you?</p> <p>13 A. With regard to?</p> <p>14 Q. The car, why didn't you document that?</p> <p>15 A. Again, I was guided by Mr. Silverio. I</p> <p>16 told him. I still had the paperwork. Michelle</p> <p>17 may have given the paperwork on it. I didn't.</p> <p>18 Q. What paperwork?</p> <p>19 A. The paperwork that I asked her to look</p> <p>20 out for just in case someone tried to --</p> <p>21 Q. No. My question is, why didn't you</p> <p>22 document to Ms. Dunn, why didn't you document in</p> <p>23 any way your rationale for terminating</p> <p>24 Miss Dunn?</p> <p style="text-align: right;">Page 189</p>	<p>1 asked me at that point, okay, document it and</p> <p>2 give it to us, I would absolutely have done</p> <p>3 that.</p> <p>4 Q. So the reason why you didn't document</p> <p>5 anything is because you thought they were going</p> <p>6 to document things, is that your testimony?</p> <p>7 A. No.</p> <p>8 Q. Then why didn't you document anything?</p> <p>9 A. Whether they did or they didn't, not</p> <p>10 that I thought they would, they never asked me</p> <p>11 to. They said we will take it from you.</p> <p>12 Q. The gist of the conversation, by the</p> <p>13 way, is basically that you say that Miss Dunn</p> <p>14 was not honest with you in connection with a</p> <p>15 conversation; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Did anybody ever ask Miss Dunn for her</p> <p>18 version of that conversation?</p> <p>19 A. I do not know.</p> <p>20 Q. Shouldn't she have been asked?</p> <p>21 MS. WALKER: Objection to the form.</p> <p>22 THE WITNESS: I do not know.</p> <p>23 BY MR. CONSOLE:</p> <p>24 Q. Would you have expected as general</p> <p style="text-align: right;">Page 191</p>
<p>1 MS. WALKER: Objection to the form.</p> <p>2 THE WITNESS: To who?</p> <p>3 BY MR. CONSOLE:</p> <p>4 Q. To anyone.</p> <p>5 A. But I have. I did.</p> <p>6 Q. No. Let me go back, then. At the time</p> <p>7 Miss Dunn was fired, had you documented the</p> <p>8 reasons for terminating Miss Dunn?</p> <p>9 A. Okay.</p> <p>10 Q. That's a question?</p> <p>11 A. Say it again, because it didn't make any</p> <p>12 sense.</p> <p>13 Q. At the time that you terminated</p> <p>14 Miss Dunn, had you documented the reasons for</p> <p>15 terminating Miss Dunn?</p> <p>16 A. I had told my superiors what was</p> <p>17 happening.</p> <p>18 Q. My question was documented --</p> <p>19 A. They, they were responsible for</p> <p>20 documenting.</p> <p>21 Q. So you felt that they had prepared</p> <p>22 documentation?</p> <p>23 A. No. They said they would handle it.</p> <p>24 And I said these are my reasons. If they had</p> <p style="text-align: right;">Page 190</p>	<p>1 manager that someone would ask Miss Dunn for her</p> <p>2 version of the conversation upon which she is</p> <p>3 allegedly being fired?</p> <p>4 MS. WALKER: Objection to the form.</p> <p>5 THE WITNESS: I would.</p> <p>6 BY MR. CONSOLE:</p> <p>7 Q. To the best of your knowledge, did</p> <p>8 anyone ever speak to Miss Dunn to ask her what</p> <p>9 happened in this conversation with you that you</p> <p>10 took offense to?</p> <p>11 A. No.</p> <p>12 Q. Why wasn't Miss Dunn herself given a</p> <p>13 document, a written warning or written reprimand</p> <p>14 to advise her of what she was being accused of</p> <p>15 so she could respond to it?</p> <p>16 A. Again, I don't know.</p> <p>17 Q. Do you think she should have as a matter</p> <p>18 of general management principles?</p> <p>19 MS. WALKER: Objection to the form.</p> <p>20 THE WITNESS: I would have.</p> <p>21 BY MR. CONSOLE:</p> <p>22 Q. Because that would be the fair thing to</p> <p>23 do; correct?</p> <p>24 MS. WALKER: Objection to the form.</p> <p style="text-align: right;">Page 192</p>

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<p>1 THE WITNESS: It would have been 2 the right thing to do, yes. 3 BY MR. CONSOLE: 4 Q. Do you have any explanation as to why 5 that wasn't done in this case? 6 A. No. 7 Q. Did you ever see Miss Dunn's personnel 8 file? 9 A. No. 10 Q. Did she have a personnel file? 11 A. My immediate reaction was yes, she 12 should have. 13 Q. Why didn't you look at it before you 14 fired her? 15 MS. WALKER: Objection to the form. 16 THE WITNESS: Again, out of my 17 hands. If I had been told, if I'd have been 18 given the full power in the dealership, maybe I 19 would have done those things. 20 BY MR. CONSOLE: 21 Q. What do you mean by that? 22 A. The power to hire and fire. My 23 interaction with everyone in the dealership 24 would have been different if I had had that</p> <p style="text-align: right;">Page 193</p>	<p>1 A. Yes. 2 Q. You say that you spoke to your sales 3 reps on your first day on the job. 4 A. Uh-huh. 5 Q. When did you first speak to Miss Dunn? 6 A. First day. 7 Q. Do you recall that conversation with 8 her? 9 A. Not in any great detail. 10 Q. Was it a one-on-one? 11 A. They were all one-on-ones. There was a 12 group and then one-on-ones. 13 Q. Can you recall anything in relation to 14 your conversation with Miss Dunn on Day 1? 15 A. It's usually the standard. I'm not here 16 to make judgments. I'm not here to make any 17 changes. Tell me everything. 18 Q. You say it's usually the standard. My 19 question is, as you sit here today, do you have 20 that recollection of having that discussion with 21 Miss Dunn, or are you just testifying as to what 22 your standard operating procedure is? 23 A. SOP, standard operating procedure. 24 Q. If I focus specifically on Miss Dunn as</p> <p style="text-align: right;">Page 195</p>
<p>1 power. 2 Q. You felt you did not have that 3 power? 4 A. Correct. 5 Q. You felt Silverio held that power over 6 you? 7 MS. WALKER: Objection to the form. 8 MR. DENGLE: Same objection. 9 THE WITNESS: Yes. 10 BY MR. CONSOLE: 11 Q. Let's turn to Exhibit P-7, please. 12 I'm sorry, P-5. I'm sorry, 13 actually P-7. This is the letter of August 5, 14 2008, P-7. 15 This is the letter of August 5th, 16 2008, that Miss Dunn wrote to Carlos 17 Hoz de Villa, who then shared it with 18 Mr. Silverio. 19 Have you ever read this? 20 A. I don't think so. 21 Q. Do you agree with me that the sales 22 performance of Mercedes-Benz Fort Washington 23 played no role in the decision to terminate 24 Miss Dunn?</p> <p style="text-align: right;">Page 194</p>	<p>1 you sit here today, do you have a recollection 2 of your first meeting with her? 3 A. Not really. 4 Q. As you sit here today, do you have a 5 recollection of any meetings with her? 6 A. Uh-huh, yes. 7 Q. What's the first meeting you recall 8 having with her? 9 A. Within that first day or the next day, 10 but they would be ongoing, and again, this is 11 not a meet me in my office at two o'clock and 12 let's have a conversation. It is in the first 13 week I'm anywhere, I like to just observe, drift 14 in and out of conversations, drift in and out of 15 offices, sit down, just talk, try and get to 16 know the players involved. So I don't think I 17 remember any real formal meeting as such, but 18 lots of conversations. 19 Q. As you sit here today, do you have a 20 recollection of your first conversation that you 21 had with Miss Dunn? 22 A. (Witness nods.) 23 MR. DENGLE: You have to answer. 24 BY MR. CONSOLE:</p> <p style="text-align: right;">Page 196</p>

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1 salespeople, and I don't really remember. Vlad	1 bitch?
2 maybe? Maybe I'm getting his name wrong.	2 A. The office manager.
3 Another salesperson and Steve Silverio.	3 Q. Who is that?
4 Q. Was the other salesperson Demitri?	4 A. Michelle Tyler.
5 A. Demitri, I'm sorry, Demitri.	5 Q. Who else?
6 Q. He is the one earlier you couldn't	6 A. His ex-wife.
7 recall the name of, right?	7 I know there were others. I just
8 A. Yes.	8 can't place the people.
9 Q. So there was Vlad, Demitri and Silverio	9 Q. Did you ever hear him refer to anyone as
10 or -	10 a cunt?
11 A. No. Vlad is Demitri.	11 A. Yes.
12 Q. So Demitri, Silverio and you?	12 Q. Who?
13 A. And one other salesperson.	13 A. The same people.
14 Q. And you don't remember who that was?	14 Q. Tyler?
15 A. I don't remember.	15 A. Yes.
16 Q. It was a man, correct?	16 Q. Was Tyler still an employee when he
17 A. Yes.	17 referred to her as a cunt?
18 Q. Tell me the conversation.	18 A. Yes.
19 A. Basically it was talking about the past,	19 Q. Did you ever hear him refer to an
20 do you remember when, do you remember when this	20 African American using racially derogatory
21 happened. Kind of Mr. Silverio holding court.	21 terms?
22 And among the things that he brought up was the	22 A. Yes.
23 fact that Regine and Joe did have a	23 Q. Have you heard him use the
24 relationship.	24 word "nigger"?
Page 201	Page 203
1 Q. And what were the terms he used?	1 A. Yes.
2 A. The crudest.	2 Q. Who did you hear him refer to as a
3 Q. Can you tell us? Don't hold back,	3 nigger?
4 because we need to know the exact words.	4 A. My daughter's boyfriend.
5 A. That he did her upstairs in the	5 Q. Your daughter's boyfriend, she was
6 bathroom. She was seen giving him a blow job in	6 dating an African American?
7 the parking lot. And other stuff that was just	7 A. Yes.
8 as crude.	8 Q. And he referred to that person as a
9 Q. That was while Miss Dunn was still an	9 nigger?
10 employee?	10 A. Uh-huh.
11 A. No. This was after.	11 Q. What was the context?
12 Q. This was after she was fired?	12 A. I would never let my daughter date..."
13 A. Months after.	13 "well, you have no choice about it. My
14 Q. You say "other things that were just as	14 daughter's boyfriend is African American." "You
15 crude." What else did he say?	15 let your daughter date a nigger?"
16 A. I really can't remember the details, but	16 Q. When was this?
17 as crude as you imagine. He's a very crude	17 A. I'd say probably about the five- or
18 person. So yeah, having sex here, having sex	18 six-month mark he felt comfortable enough.
19 there, doing this, doing that. He's married.	19 Q. Did you ever hear him make remarks about
20 He's my cousin. Just general bad stuff.	20 gay people?
21 Q. Did you ever hear him refer to women as	21 A. Yes.
22 "bitches"?	22 Q. Did you ever hear him use terms such as
23 A. Yes.	23 "queer," "faggot"?
24 Q. Who did you hear him refer to as a	24 A. Yes.
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<p>1 to your daughter's boyfriend?</p> <p>2 A. Yes.</p> <p>3 Q. Did you tell him about the references to</p> <p>4 Tom Palmer?</p> <p>5 A. Yes.</p> <p>6 Q. When did you first have that</p> <p>7 conversation with Petruzzello?</p> <p>8 A. The day he called my daughter a spic.</p> <p>9 Q. Who called your daughter a spic?</p> <p>10 A. Steve Silverio.</p> <p>11 Q. Your daughter a spic?</p> <p>12 A. Uh-huh.</p> <p>13 Q. What's the rationale there?</p> <p>14 A. She's Puerto Rican.</p> <p>15 Q. So he calls her a spic and makes a</p> <p>16 comment about her boyfriend?</p> <p>17 A. No. A comment about the boyfriend was</p> <p>18 first, and I said my daughter dated an African</p> <p>19 American. He said, "Well, at least she's not</p> <p>20 dating a spic." I said, "Well, my daughter is</p> <p>21 Puerto Rican." It was that day I went to Vince,</p> <p>22 and I don't remember when it was and I'm</p> <p>23 thinking it's halfway through my time there.</p> <p>24 Q. Did anyone ever get back to you with the</p> <p style="text-align: right;">Page 209</p>	<p>1 Q. Why not?</p> <p>2 A. Once I sent the letter, which I believe</p> <p>3 was on a Friday, I was leaving the country for</p> <p>4 three weeks. I think I had been in the hospital</p> <p>5 maybe two weeks before that, and I guess I would</p> <p>6 absolutely have stated those things. I just</p> <p>7 didn't feel I was -- I had no response so I</p> <p>8 didn't feel I was getting anywhere.</p> <p>9 So my request was, put this in</p> <p>10 front of Park Avenue, get me in front of them.</p> <p>11 And I had hoped at that time to be given the</p> <p>12 forum to explain everything.</p> <p>13 Q. Including Silverio's racist,</p> <p>14 anti-Semitic, sexist comments?</p> <p>15 A. Correct.</p> <p>16 Q. Did you not reference those comments in</p> <p>17 this letter to Joann George because you were</p> <p>18 fearful that you would be retaliated against if</p> <p>19 you did?</p> <p>20 MS. WALKER: Objection to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. CONSOLE:</p> <p>23 Q. Why did you have that fear?</p> <p>24 A. Because I had stopped doing anything</p> <p style="text-align: right;">Page 211</p>
<p>1 results of any investigation into your complaint</p> <p>2 about Mr. Silverio?</p> <p>3 A. No one responded to anything until I</p> <p>4 sent a letter.</p> <p>5 Q. How long after your complaint about</p> <p>6 Mr. Silverio was it that you were fired?</p> <p>7 MS. WALKER: Objection to the form.</p> <p>8 THE WITNESS: The complaint</p> <p>9 verbally to Vince or the letter?</p> <p>10 BY MR. CONSOLE:</p> <p>11 Q. The complaint verbally to Vince.</p> <p>12 A. Six months.</p> <p>13 Q. And how long after the letter?</p> <p>14 A. Two, three months. I think I sent a</p> <p>15 letter in November and I think I responded</p> <p>16 March 1st, so.</p> <p>17 Q. In the letter you don't make any</p> <p>18 reference to either the vulgar and inappropriate</p> <p>19 comments of Silverio or your complaint about</p> <p>20 Silverio, do you?</p> <p>21 MR. DENGLER: Objection to the</p> <p>22 form.</p> <p>23 THE WITNESS: That is correct.</p> <p>24 BY MR. CONSOLE:</p> <p style="text-align: right;">Page 210</p>	<p>1 other than what I thought was the right thing to</p> <p>2 do in terms of running my business, which meant</p> <p>3 if I wasn't upsetting Carlos Hoz de Vila one</p> <p>4 day, I was upsetting Vince Petruzzello and I</p> <p>5 was upsetting Steve Silverio. They were</p> <p>6 fighting literally.</p> <p>7 I lost complete faith in that</p> <p>8 hierarchy of management. I didn't want to</p> <p>9 appear, I think in that letter, like it was --</p> <p>10 it was much personal. The things about my</p> <p>11 children are very hurtful, so I didn't want it</p> <p>12 to appear personal. If I committed it to paper,</p> <p>13 it would have come out that way. So I figured I</p> <p>14 had the right to speak to the people at Park</p> <p>15 Avenue and tell them. I think if I would have</p> <p>16 put it in there, I don't think I would have</p> <p>17 gotten the chance. Because I knew where it was</p> <p>18 going. I don't think I would have got the</p> <p>19 chance, so I just, I guess, thought that was my</p> <p>20 best chance.</p> <p>21 Q. In other words, if you had referenced</p> <p>22 those comments, you wouldn't have gotten a</p> <p>23 chance to speak to Park Avenue, is that your</p> <p>24 thought?</p> <p style="text-align: right;">Page 212</p>

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<p>1 because Mr. Esposito was fired?</p> <p>2 A. No.</p> <p>3 Q. Did you think when you met with</p> <p>4 Miss Dunn initially that she was going to leave</p> <p>5 Mercedes-Benz relatively soon no matter what</p> <p>6 happened?</p> <p>7 A. Yes.</p> <p>8 Q. Why was that?</p> <p>9 A. Didn't want to be there.</p> <p>10 Q. Did you ever tell Miss Dunn that you</p> <p>11 were open to keeping her?</p> <p>12 A. Yes.</p> <p>13 Q. When did you tell her that?</p> <p>14 A. The first day, second day.</p> <p>15 Q. Did you ever tell her that she was</p> <p>16 having a job interview with you?</p> <p>17 A. Yeah, that sounds like something I would</p> <p>18 say, consider this a job interview.</p> <p>19 Q. Consider what a job interview?</p> <p>20 A. Our next interaction, our interaction</p> <p>21 over the next two, three, four, five days.</p> <p>22 Q. Let me turn to Page 3755 of Exhibit</p> <p>23 P-46. Again, this document I think you</p> <p>24 testified this morning was prepared some time</p> <p style="text-align: right;">Page 225</p>	<p>1 those are the things that -- that is the thing</p> <p>2 that I used.</p> <p>3 BY MR. CONSOLE:</p> <p>4 Q. Did that list have the date by each line</p> <p>5 item?</p> <p>6 A. No.</p> <p>7 Q. So how did you come up with the dates,</p> <p>8 then?</p> <p>9 A. You get out a calendar, you read the</p> <p>10 dates that you do have, and to the best of your</p> <p>11 recollection, you put it down.</p> <p>12 Q. Well, for example, you have an</p> <p>13 October 8th, 2008, entry here.</p> <p>14 A. Uh-huh.</p> <p>15 Q. And you say, "By the end of the day, I</p> <p>16 had already caught Regina Dunn in several</p> <p>17 serious lies, and again I urged her to be</p> <p>18 candid."</p> <p>19 Now, what is the basis for your</p> <p>20 saying that this conversation happened on</p> <p>21 October 8th, 2008, when you prepared this</p> <p>22 document?</p> <p>23 A. To the best of my recollection.</p> <p>24 Q. But that wasn't jogged by a date entry</p> <p style="text-align: right;">Page 227</p>
<p>1 around November of 2009; correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Am I correct that you didn't have, when</p> <p>6 you prepared this document, a recollection of</p> <p>7 the various meetings you had on the various</p> <p>8 dates listed here, is that true?</p> <p>9 MS. WALKER: Objection to the form.</p> <p>10 THE WITNESS: I'm sorry, repeat</p> <p>11 that.</p> <p>12 BY MR. CONSOLE:</p> <p>13 Q. In other words, when you're preparing</p> <p>14 this document in November of 2009 --</p> <p>15 A. Right.</p> <p>16 Q. -- do you just recall that on</p> <p>17 October 8th, 2008, you had a meeting with</p> <p>18 Miss Dunn?</p> <p>19 MS. WALKER: Objection to the form.</p> <p>20 THE WITNESS: No. If you would</p> <p>21 think back to what I said, I like to keep a</p> <p>22 running total of things that kind of I read them</p> <p>23 and it sparks my memory. That is the list that</p> <p>24 I kept on the computer at work. So I believe</p> <p style="text-align: right;">Page 226</p>	<p>1 on your missing notes?</p> <p>2 A. I don't know. That could have been the</p> <p>3 one line that was dated.</p> <p>4 Q. Or it could be that you're just</p> <p>5 estimating?</p> <p>6 A. Yes.</p> <p>7 Q. Is it true that by October 8th, 2008,</p> <p>8 you had caught Regina Dunn in several serious</p> <p>9 lies?</p> <p>10 A. According to my standards, yes.</p> <p>11 Q. This is your third day on the job.</p> <p>12 A. Uh-huh.</p> <p>13 Q. What were the lies that you had caught</p> <p>14 Miss Dunn in as of October 8th?</p> <p>15 A. I'm reading.</p> <p>16 I think this is the -- the car was</p> <p>17 Day 3. Maybe it was Day 2. So that would be</p> <p>18 one. I don't remember specifically.</p> <p>19 Q. As you sit here today, is there any</p> <p>20 other event that you would call a lie by</p> <p>21 Miss Dunn other than that event that you have</p> <p>22 testified to at some length today --</p> <p>23 A. Yes.</p> <p>24 Q. -- Involving that car?</p> <p style="text-align: right;">Page 228</p>

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<p>1 A. Yes. Lying to me about deals, what's 2 happening with this deal, what's happening with 3 that deal? Did you call this customer? That 4 kind of stuff. Stuff that I would go to a 5 salesperson and the salesperson would say, no, 6 that didn't happen.</p> <p>7 Q. I'd like to be as specific as we can. 8 So we've got one example of what you're calling 9 a lie, you testified to. Is there any other 10 examples of a lie that you can tell us about 11 today?</p> <p>12 MS. WALKER: Objection to the form. 13 THE WITNESS: Yeah, I don't recall 14 any as big as the one I testified to. The rest 15 just fell into the day-to-day running of the 16 organization.</p> <p>17 BY MR. CONSOLE: 18 Q. I don't care if they're big or small. 19 Can you tell me any other lie?</p> <p>20 A. I still can't recollect.</p> <p>21 Q. You write on October 8th that, you 22 write, "I also asked why she spent hours walking 23 around the dealership talking on her cell phone 24 in an animated fashion."</p> <p style="text-align: right;">Page 229</p>	<p>1 emotional when talking to a nanny? 2 MS. WALKER: Objection to the form. 3 THE WITNESS: That is two different 4 things all together. 5 BY MR. CONSOLE: 6 Q. I'm trying to understand why -- 7 A. I'm saying, if you have to be that 8 emotional, if there's something going on that's 9 obviously perturbing you because you are so 10 upset as you're talking up and down, you're so 11 outraged, yeah, I think some part of me was 12 like, yeah, if that was my nanny, I'd probably 13 fire them.</p> <p>14 Q. You still have to have a nanny. If you 15 fire a nanny, you have to have a replacement 16 nanny, right?</p> <p>17 MS. WALKER: Objection to the form. 18 THE WITNESS: I guess so. 19 BY MR. CONSOLE: 20 Q. So is there any other reason that you 21 believe she was lying when she said she was 22 talking to her nanny other than that she seemed 23 animated and you had a gut feeling? 24 A. No.</p> <p style="text-align: right;">Page 231</p>
<p>1 A. Uh-huh. 2 Q. Do you recall asking her that? 3 A. Yes. 4 Q. What did she say? 5 A. Talking to her nanny. 6 Q. Did you believe her? 7 A. No. 8 Q. Why not? 9 A. My gut. 10 Q. Your gut told you on Day 3 that she was 11 lying to you about talking to her nanny? 12 A. Yes. 13 Q. Can you explain that? 14 A. If I had employed a nanny that I would 15 have to be that aggravated on the phone and 16 walking and stamping and splaying my arms, I'd 17 fire the nanny. That didn't make any sense to 18 me at all -- 19 Q. You thought it was too animated the way 20 she was talking to her nanny? 21 A. Uh-huh. 22 Q. Have you ever had a nanny? 23 A. I haven't been that lucky, no. 24 Q. You think a mother would not be</p> <p style="text-align: right;">Page 230</p>	<p>1 Q. Now, you write here, "I suspect she was 2 talking to Joe Esposito (covering tracks) and I 3 said so." Is that a true statement? 4 A. Yes. 5 Q. So you told Miss Dunn on Day 3 that you 6 suspected she was talking to Esposito? 7 A. No. I think my said so would be to 8 Mr. Silverio in my efforts to tell him I needed 9 to move ahead. Tell me more, what's happening. 10 Q. So you spoke to Silverio about your 11 belief that Dunn was talking to Esposito? 12 A. Actually, I think he brought it up. He 13 was in the dealership. He was in the dealership 14 and he brought it up and he said. 15 Q. He said what? 16 A. She's talking to Esposito. 17 Q. That's what Silverio told you? 18 A. Yes. 19 Q. Did he indicate why he concluded that? 20 A. No. 21 Q. And what does the parents, "covering 22 tracks" mean in this entry? 23 A. When a person leaves a dealership 24 unexpectedly, the person doesn't usually get the</p> <p style="text-align: right;">Page 232</p>

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<p>1 opportunity to tie up all the loose ends, and 2 there are a lot of loose ends that you can leave 3 unexpectedly, some of them good, some of them 4 are not good, some of them just have the 5 appearance of not being good. But if you want 6 to keep any kind of good name going forward, 7 then you need to cover your tracks, you need to 8 make sure that everything you started is 9 finished, good, bad or indifferent.</p> <p>10 Q. So Esposito was covering his tracks, is 11 what you meant by that entry?</p> <p>12 A. No. Because he's not in the dealership 13 so he needs someone else to cover them for him.</p> <p>14 Q. But you never spoke to Dunn saying I 15 think you're talking to Esposito?</p> <p>16 A. No.</p> <p>17 Q. The next line, "She neither confirmed or 18 denied this. She just walked away." 19 Have I read that right?</p> <p>20 A. Yes.</p> <p>21 Q. What's that referring to?</p> <p>22 A. Maybe I did ask.</p> <p>23 Q. Do you want to change your testimony 24 from 30 seconds ago?</p> <p style="text-align: right;">Page 233</p>	<p>1 would walk away from any of those conversations.</p> <p>2 Q. But Silverio is the one who actually 3 raised it with you?</p> <p>4 A. Yes.</p> <p>5 Q. You then write, "I pushed further and 6 told him I also didn't believe she had the 7 requisite skills for her position."</p> <p>8 A. Uh-huh.</p> <p>9 Q. Is that a true statement?</p> <p>10 A. Yes.</p> <p>11 Q. What skills did you tell Mr. Silverio 12 that Miss Dunn was lacking?</p> <p>13 A. People skills.</p> <p>14 Q. Anything else?</p> <p>15 A. Well, she hadn't performed on a business 16 level for me to critique.</p> <p>17 Q. It's only Day 3, right?</p> <p>18 A. A lot happens in a day.</p> <p>19 Q. So by Day 3 you've concluded that 20 Miss Dunn does not have the people skills to be 21 successful in her position?</p> <p>22 A. Correct.</p> <p>23 Q. Do you ever write that anywhere?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 235</p>
<p>1 MS. WALKER: Objection to the form.</p> <p>2 THE WITNESS: No, I don't think I 3 have a clear recollection of what the 4 conversation was. I don't usually, I don't 5 usually accuse someone without knowing for sure 6 and that would be accusatory for me. Then 7 again, maybe I was mad.</p> <p>8 BY MR. CONSOLE:</p> <p>9 Q. So you don't know if that's a true 10 statement?</p> <p>11 A. Correct.</p> <p>12 Q. You say, "I told Steve Silverio of these 13 events, but he gave no input." That's not 14 accurate either, is it?</p> <p>15 MS. WALKER: Objection to the form.</p> <p>16 THE WITNESS: We are talking about 17 a conversation where Steve was the first one to 18 bring it up.</p> <p>19 BY MR. CONSOLE:</p> <p>20 Q. Right.</p> <p>21 A. It's not one day or two days. It's 22 every day. Steve was at the store every other 23 day and when he wasn't there, I probably, again, 24 to make my case, it's still going on, and he</p> <p style="text-align: right;">Page 234</p>	<p>1 Q. What did Silverio say?</p> <p>2 A. Nothing.</p> <p>3 Q. You write here, "He told me to give it 4 another week and consider her for a finance 5 position."</p> <p>6 Is that a true statement?</p> <p>7 A. Maybe that's the time he brought it up.</p> <p>8 Q. Do you know?</p> <p>9 A. No. I just know that he did.</p> <p>10 Q. Then you write, "I told him I would, 11 reluctantly." Did I read that correctly?</p> <p>12 A. You did.</p> <p>13 Q. And that means that you would consider 14 her for a finance position; correct?</p> <p>15 A. No. That just means I told him I would.</p> <p>16 Q. So you were lying to him?</p> <p>17 A. (Witness nods.)</p> <p>18 Q. You have to answer verbally.</p> <p>19 A. I'm sorry. Yes.</p> <p>20 Q. Why were you lying to him on Day 3 of 21 the job?</p> <p>22 A. Tl for lat.</p> <p>23 Q. Because you concluded that he had been 24 lying to you?</p> <p style="text-align: right;">Page 236</p>

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<p>1 A. Uh-huh. 2 Q. Yes? 3 A. Yes. 4 Q. As of this point in time, this 5 October 8th, this event with the car that you 6 testified to wasn't even discovered yet; 7 correct? 8 MS. WALKER: Objection to the form. 9 THE WITNESS: It was very early on 10 about the car, so I started on the 6th, this is 11 the 8th, the 9th. It could have been at that 12 time. 13 BY MR. CONSOLE: 14 Q. You don't reference it? 15 A. Maybe it wasn't. 16 Q. It is such a big deal, you would 17 reference it, wouldn't you? 18 MS. WALKER: Objection to the form. 19 THE WITNESS: No. 20 BY MR. CONSOLE: 21 Q. Why not? 22 A. I'm three days on the job. I'm trying 23 to tell everything I can for the people I work 24 for and let them handle it.</p> <p style="text-align: right;">Page 237</p>	<p>1 A. That I moved it in there or the date? 2 Q. The date? 3 A. The statement's true. The date I don't 4 know. 5 Q. So you think as you sit here today that 6 that date's wrong? 7 A. Yes. 8 Q. Do you know why you put the wrong date 9 in this form? 10 A. Maybe I didn't have the date by it in my 11 list. 12 Q. Any other reason? 13 A. No. 14 Q. You then say, "My fears were confirmed 15 immediately and in my opinion she was a 16 substandard desk person at best and her turnover 17 skills were very combative." 18 A. Uh-huh. 19 Q. Is this by Day 4 you concluded this? 20 A. Yes. 21 Q. What did you see that made you conclude 22 that she was a substandard desk person at best? 23 A. Not controlling the deal. Not 24 controlling the salesperson in the deal or the</p> <p style="text-align: right;">Page 239</p>
<p>1 Q. So you're going to reference you don't 2 think Regina Dunn has people skills, but you're 3 not going to reference an issue where you think 4 she's lied to you about a car? 5 A. Apparently so. 6 Q. Isn't it true you moved your desk into 7 Regina Dunn's office on October 30th, 2008, 8 right before she was fired? 9 A. No. 10 Q. Are you sure about that? 11 A. Yes. 12 Q. When did you move your desk into her 13 office? 14 A. I think it was two weeks, which would 15 make it the 20th. 16 Q. 20th? 17 A. Or around there. 18 Q. Let's look at your, back to P-46, the 19 October 9th entry. "I moved my (actual) desk 20 into Regina's office to watch her work and 21 assess her desk and turnover skills up close." 22 Have I read that correctly? 23 A. You have. 24 Q. Is that a true statement?</p> <p style="text-align: right;">Page 238</p>	<p>1 salespeople controlled her, which means the 2 salespeople didn't come in and ask. They came 3 in and told. 4 Q. Did you think they didn't show the 5 requisite amount of respect for her? 6 MS. WALKER: Objection to the form. 7 THE WITNESS: I can't answer that. 8 I don't know what happened before. Maybe this 9 was a code of conduct that was encouraged. 10 BY MR. CONSOLE: 11 Q. Did you think that the salespeople, the 12 salesmen on the floor were showing a lack of 13 respect for Miss Dunn in the way they treated 14 her? 15 A. Good point. Yes. 16 Q. Did you do anything about that? 17 A. Yes. 18 Q. What did you do? 19 A. I tried to exert the processes with the 20 sales room before I got any others, and I would 21 tell them you have to give us a chance to make 22 the deals, which means don't take shortcuts, do 23 this, this, and this. And if I see you come in 24 the office without going through this, this, and</p> <p style="text-align: right;">Page 240</p>

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1 this, we're going to have a problem. You must
2 respect the desk.
3 Q. Did you see anything from Miss Dunn that
4 made you think that she was combative or very
5 combative?
6 A. Yes. I saw her with two customers that
7 she was arguing with.
8 Q. About what?
9 A. By the time I got past, one of the
10 customers got up. They were mad. It wasn't a
11 negotiation. It was browbeating. She took a
12 combative position.
13 Q. Did you overhear the conversation or
14 were you watching it from a distance?
15 A. Watching it from a distance. By the
16 time I got over there, I heard one of the
17 customers say pretty much, "Let's go, let's go,
18 let's go."
19 Q. Did you speak to Miss Dunn about that
20 conversation?
21 A. I actually followed the customer.
22 Q. My question was, did you speak to
23 Miss Dunn about that conversation?
24 A. No.

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1 Q. Why not?
2 A. I've answered the question several
3 times. I'm pretty much done at this point.
4 Q. "This point," being Day 4?
5 A. 4, 5.
6 Q. You say, the next line, "In many cases,
7 she alienated customers and in some instances
8 she got into arguments with them." Is that what
9 you just referred to, or is there something
10 else?
11 A. That would be it.
12 Q. You say, the next line, "I apprised
13 Steve Silverio of these findings, and I again
14 asked to be allowed to fire her."
15 A. Uh-huh.
16 Q. Is that true that you asked to be
17 allowed to fire her on October 9th?
18 A. Yes. But we already decided this date
19 may be wrong.
20 Q. My question is, is it true that you had
21 made the decision to fire her by October 9th?
22 A. Yeah, I'd have to refer back to the
23 situation of the car. I'm pretty sure this was
24 all around the same time. I think the car was

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1 Day 3. So that would line up with that, so yes.
2 Q. As of this point in your chronology here
3 that we're looking at as part of P-46, am I
4 correct that there is no reference to this car
5 issue?
6 A. Correct.
7 Q. According to what you wrote here, your
8 decision to terminate Miss Dunn was made based
9 on your observing her interactions with
10 customers; correct?
11 A. That was part of it, yes.
12 Q. And then the fact that she spent too
13 much time on a cell phone?
14 A. And the fact that she didn't deal deals
15 correctly, and the fact that she wasn't
16 available to the salespeople when they needed
17 her.
18 Q. So your decision to fire Miss Dunn was
19 made without any regard to the car issue that
20 you testified to earlier in this deposition;
21 correct?
22 MR. TINARI: I object to the form.
23 THE WITNESS: No. It is just that
24 I haven't listed about the car yet.

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1 BY MR. CONSOLE:
2 Q. I want to focus on this. Are you saying
3 that when you first considered terminating
4 Miss Dunn, are you saying that that was before
5 or after the issue arose with the car?
6 MS. WALKER: Objection to the form.
7 THE WITNESS: I'm saying they all
8 happened around the same time.
9 BY MR. CONSOLE:
10 Q. Is it possible that the car issue
11 happened after you had made a decision to
12 terminate Miss Dunn?
13 MS. WALKER: Objection to the form.
14 THE WITNESS: I do not think so.
15 BY MR. CONSOLE:
16 Q. But as far as your written materials
17 here, do you have any explanation as to why you
18 would not have referenced the car issue before
19 referencing your decision to terminate
20 Miss Dunn?
21 MS. WALKER: Objection to the form.
22 Mischaracterization of testimony.
23 BY MR. CONSOLE:
24 Q. You can answer it.

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TERRY BURKE REPORTING

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1 A. I think I did everything that I was
2 supposed to do with respect to my superiors and
3 giving them the information that they needed to.
4 Q. My question is, do you have any
5 explanation as to why in this document that you
6 prepared you did not reference the car issue
7 before you referenced a decision to terminate
8 Miss Dunn?
9 MS. WALKER: Objection to the form.
10 Mischaracterization of the testimony.
11 BY MR. CONSOLE:
12 Q. You can answer it.
13 A. No.
14 Q. You had decided to terminate Miss Dunn
15 before you had even met with Mr. Mogilyansky;
16 correct?
17 A. Yes.
18 I ran across him a couple of times.
19 Regina had pointed him out to me. I may have
20 said hi. I may have shared a brief conversation
21 with him. I think Steve Silverio tried to
22 introduce me to him, but I couldn't say -- so
23 he may have come across my path before I
24 actually sat down and had an in-depth what he

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1 was about --
2 Q. Isn't it true that you met Andrew
3 Mogilyansky for the first time on October 10th?
4 A. I think I just answered that in the
5 previous. I may have run across him before and
6 said hi.
7 Q. I'm looking at the October 10th entry on
8 Exhibit P-46, "I met Andrew Mogilyansky for the
9 first time." Is that a true statement?
10 A. I think it's more accurate to say that's
11 when I sat down with him the first time.
12 Q. The first time you had any kind of
13 substantive discussion with him?
14 A. Yes.
15 Q. And am I correct, then, that your
16 decision to fire Miss Dunn had been made before
17 you sat down and had a substantive discussion
18 with Mr. Mogilyansky for the first time?
19 A. Yes.
20 Q. Now, at some point did you conclude that
21 Mr. Mogilyansky's relationship with the
22 dealership of Mercedes-Benz of Fort Washington
23 was not appropriate?
24 A. Yes.

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1 Q. And when did you reach that conclusion?
2 A. On the day that he told me how his
3 business model worked.
4 Q. And when he told you how his business
5 model worked, did he indicate to you -- first of
6 all, how long had he been doing business with
7 Mercedes-Benz Fort Washington?
8 A. Six months maybe.
9 Q. Who brought him to Mercedes-Benz of Fort
10 Washington?
11 A. I don't know.
12 Q. Isn't it true that it was Mr. Silverio?
13 MS. WALKER: Objection to the form.
14 THE WITNESS: I have no idea.
15 BY MR. CONSOLE:
16 Q. Did you ever ask him how he got there?
17 A. Many, many times.
18 Q. Ask Mr. Silverio?
19 A. Mr. Mogilyansky.
20 Q. What did he say?
21 A. That he did business with all of the
22 dealerships in the area. He did business with
23 Cherry Hill Mercedes, Cherry Hill Volkswagen.
24 He named ten dealerships and he said he just

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1 happened to come into the dealership one time.
2 Q. At some point in time did you speak to
3 Mr. Silverio about Mogilyansky?
4 A. Yes.
5 Q. And did you tell Silverio that you
6 thought the dealership should stop doing
7 business with Mogilyansky?
8 A. Yes.
9 Q. When did you first tell Silverio that?
10 A. Pretty soon after that first meeting.
11 Days.
12 Q. Some time in October of '08?
13 A. Yes, uh-huh.
14 Q. Did Mercedes-Benz stop doing business
15 with Mogilyansky?
16 A. Mercedes-Benz of Fort Washington?
17 Q. Yes.
18 A. No.
19 Q. Did Mercedes-Benz of Fort Washington
20 continue to do business with Mogilyansky through
21 the date of your termination?
22 A. No. He was in jail by then.
23 Q. So when did Mercedes-Benz of Fort
24 Washington stop doing business with Mogilyansky?

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